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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

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In the Matter of:

DELPHI CORPORATION,

Debtor.

- - - - -x

October 27, 2006

10:35 AM

One Bowling Green
Room 620-1
New York, NY 10004

B E F O R E:

HON. ROBERT D. DRAIN,
U.S. BANKRUPTCY JUDGE

DELPHI CORPORATION

Objection to Motion /Objection of Certain
Utility Companies to Motion for Interim and
Final Orders Under 11 U.S.C. Sections 105,
366, 503, and 507 (I) Prohibiting Utilities
from Altering, Refusing, or Discontinuing
Services on Account of Pre-petition Invoices
and (II) Establishing Procedures for
Determining Requests for Additional Assurance

Motion to Allow Motion For Interim And Final
Orders Under 11 U.S.C. Sections 105, 366, 503,
And 507 (I) Prohibiting Utilities From
Altering, Refusing, Or Discontinuing Services
On Account Of Pre-petition Invoices And (II)
Establishing Procedures For Determining
Requests For Additional Assurance

Motion to Authorize Motion For Order Under 11
U.S.C. Sections 105, 362, And 541 And Fed.R.
Bankr. P. 3001 Establishing Notification And
Hearing Procedure For Trading In Claims And
Equity Securities

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Objection to Motion /Objection Of Duraswitch
Industries, Inc. To Debtors' Motion For An
Order Under 11 U.S.C. 365(a) Authorizing
Rejection Of License Agreement

Motion to Authorize Motion For Order Under 11
U.S.C. Sections 361, 362, 363, 364(c), 364(d)
And 364(e) And Fed. R. Bankr. P. 2002, 4001
And 9014 (I) Authorizing Debtors To Obtain
Secured Post-petition Financing On
Superpriority Secured And Priming Basis, (II)
Authorizing Use Of Cash Collateral, (III)
Granting Adequate Protection To Pre-petition
Secured Lenders, (IV) Granting Interim Relief,
And (V) Scheduling A Final Hearing Under Fed.
R. Bankr. P. 4001 (b) and (c)

Response Debtors' Omnibus Reply To Objections
To DIP Financing Motion

Notice of Hearing Proposed First Omnibus
Hearing Agenda

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Motion to Quash A Subpoena Non-Party's Motion
to Quash Subpoena

Notice of Proposed Order Notice Of Filing Of
Proposed Final Order Under 11 U.S.C. Sections
105, 361, 362, 364(c)(1), 364(c)(2),
364(c)(3), 364(d)(1), And 364(e) And Fed. R.
Bankr. P. 2002, 4001 And 9014 (I) Authorizing
Debtors To Obtain Post-petition Financing,
(II) To Utilize Cash Collateral And (III)
Granting Adequate Protection To Pre-petition
Secured Parties

Motion to Approve Motion For Order Under 11
U.S.C. Sections 102(1) And 105 And Fed. R.
Bankr. P. 2002(m), 9006, 9007, And 9014
Establishing (I) Omnibus Hearing Dates, (II)
Certain Notice, Case Management, And
Administrative Procedures, And (III)
Scheduling Initial Case Conference In
Accordance With Local Bankr. R. 1007-2(e)

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Motion to Authorize Motion For Order Under 11
U.S.C. Sections 361, 362, 363, 364(c), 364(d)
And 364(e) And Fed. R. Bankr. P. 2002, 4001
And 9014 Authorizing Debtors To Obtain Secured
Post-petition Financing On Superpriority
Secured And Priming Basis, (II) Authorizing
Use Of Cash Collateral, (III) Granting
Adequate Protection To Pre-petition Secured
Lenders, (IV) Granting Interim Relief, And (V)
Scheduling A Final Hearing Under Fed. R.
Bankr. P. 4001 (b) and (c)

Motion to Authorize Motion For Order Under 11
U.S.C. Sections 327, 330, And 331 Authorizing
Retention Of Professionals Utilized By Debtors
In The Ordinary Course Of Business

Motion to Approve Motion For Administrative
Order Under 11 U.S.C. Section 331 Establishing
Procedures For Interim Compensation And
Reimbursement Of Expenses Of Professionals

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Motion to Authorize Motion For Order Under 11
U.S.C. Sections 361, 362, 363, 364(c), 364(d)
And 364(e) And Fed. R. Bankr. P. 2002, 4001
And 9014 Authorizing Debtors To Obtain Secured
Post-petition Financing On Superpriority
Secured And Priming Basis, (II) Authorizing
Use Of Cash Collateral, (III) Granting
Adequate Protection To Pre-petition Secured
Lenders, (IV) Granting Interim Relief, And (V)
Scheduling A Final Hearing Under Fed. R.
Bankr. P. 4001 (b) and (c)

Motion to Authorize Motion For Order Under 11
U.S.C. Sections 361 And 363(b) And Fed. R.
Bankr. P. 4001(c) Authorizing Debtors To
Continue Honoring Pre-petition Insurance
Premium Finance Agreement And Continue Grant
Of Security Interest To Insurance Premium
Finance Company

Transcribed by: Esther Accardi

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DELPHI CORPORATION

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2 P R O C E E D I N G S

3 THE COURT: All right. Please
4 be seated. Delphi Corporation?

5 MR. BUTLER: Your Honor, good
6 morning. My name is Jack Butler from
7 the law firm of Skadden, Arps, Slate,
8 Meagher & Flom LLP, here with my
9 partner, Kayalyn Marafioti and our
10 special counsel, Doug Bartner, for the
11 purposes of our October 27th omnibus
12 hearing. This is the monthly omnibus
13 hearing for the month of October. Your
14 Honor, we have filed and served a
15 proposed first omnibus hearing agenda
16 and with Your Honor's permission, we'll
17 follow that agenda.

18 THE COURT: Okay.

19 MR. BUTLER: Your Honor, the
20 first item on that agenda, item number 1
21 is the Interim Compensation Order,
22 docket number 11. We had been in
23 discussions with the creditors'
24 committee and with the United States
25 Trustee regarding the form of that

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2 order. With respect to the inner comp
3 arrangements, we believe we have a
4 proposed form of final order. We're
5 going to be dealing with that over the
6 next week. We ask Your Honor to take
7 that up on the November 4th adjourned
8 hearing so we can get a sign-off from
9 the U.S. Trustee on the form of order.

10 THE COURT: Okay. And are
11 those same people talking about, you
12 know, a fee committee?

13 MR. BUTLER: Yes, Your Honor,
14 and in fact the United States Trustee
15 observed to us that even under the inner
16 comp order, the first monthly statements
17 in this case aren't generated until
18 November 30th and that the November 29th
19 omnibus hearing would be an appropriate
20 time to take that up and they wanted to
21 consider certain matters further and
22 consult with the committee.

23 THE COURT: Okay.

24 MR. BUTLER: So that portion,
25 Your Honor -- the fee committee portion

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2 would come up on the November 29th
3 hearing.

4 THE COURT: Okay.

5 MR. BUTLER: Your Honor, the
6 next items, and I'll just take items 2
7 all the way through item 8, are
8 retention applications for the debtors'
9 professionals that have been pursued to
10 which an interim orders had been
11 entered. The creditors' committee is in
12 the process of completing their review
13 in these things. They were appointed
14 last Monday, Your Honor, a week ago. I
15 should report to the Court that
16 following their appointment in an
17 organizational meeting held, I think, on
18 the 17th of October, the -- we held our
19 first fall committee meeting with the
20 committee on the 25th, this Tuesday, the
21 debtors did, and had a full agenda with
22 the committee. The committee asked us
23 if we would adjourn all of these to
24 November 4th so they can complete their
25 review given the press of other matters.

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2 The U.S. Trustee has also advised us
3 that they expect to have completed their
4 review for purposes of a final order on
5 November 4th.

6 THE COURT: All right. Okay.

7 MR. BUTLER: Your Honor, the
8 next item on the agenda is item number
9 9. This is the ordinary course of
10 professionals item. We had discussions
11 with United States Trustee about the OCP
12 order. Essentially, the form of relief
13 that we're going to request in this
14 motion is going to change and rather
15 than have a multi-tiered order, there
16 will be an order that will basically say
17 that any professional who exceeds 50,000
18 a month or \$500,000 for the aggregate
19 case, will have to file a retention
20 application and go through the normal
21 327(a) or (e) approach. Anyone less
22 than that can be governed by the OCP
23 order. We're working on the final form
24 of order with the U.S. Trustee and
25 intend to present it to Your Honor at

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2 the November 4th adjourned hearing.

3 THE COURT: All right.

4 MR. BUTLER: Your Honor, number
5 10 on the agenda, is the claims trading,
6 the final hearing on the claims trading
7 motion. This is the motion that is
8 intended to help preserve our NLO and
9 other tax positions and other asset
10 positions. This, by agreement with the
11 Cleary firm, was removed to the November
12 29th hearing. There's continued work
13 being done trying to work on a
14 consensual final order.

15 THE COURT: Okay. That's fine.

16 MR. BUTLER: And finally, Your
17 Honor, also on the agenda is number 11,
18 is the Rothschild retention. This has a
19 success fee in it. It's subject to the
20 45-day rule here in the Southern
21 District and it will therefore be heard
22 for a final hearing at the November 29th
23 omnibus hearing.

24 THE COURT: Right.

25 MR. BUTLER: Your Honor, now

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I'm moving on to the matters that we believe were uncontested, agreed or otherwise resolved. The first matter is item number 12. This deals with insurance financing. It's our motion seeking authority to continue honoring pre-petition insurance premium finance agreements and related matters. Your Honor, we request our authorization from the Court to continue to honor our obligations to an entity called Chamomile, Inc., pursuant to a pre-petition insurance premium financing agreement. We have reviewed the terms of the agreement, have been provided that the creditors' committee. Neither the committee nor any other party, has objected to the relief requested, unless Your Honor has any other questions, we rely on the papers.

THE COURT: No. I reviewed the papers. Unless -- does anyone else want to be heard on this matter? Hearing no one, and based on my review of the

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2 motion, I'll approve it.

3 MR. BUTLER: Thank you. Your
4 Honor, the next matter, matter number
5 13, is our motion to assume the HSBC
6 purchase card and to continue to use the
7 purchase card agreement and travel card
8 agreement with HSBC Bank, USA National
9 Association. And Your Honor,
10 essentially we have, in this agreement,
11 asked to assume and take various actions
12 with respect to the agreement that we
13 use, to deal with about 1,080 of our
14 employees who use this as a purchase
15 card through our plant facilities in the
16 U.S. and elsewhere and about 12,500 of
17 our employees who use this card in the
18 ordinary course of the day's business in
19 connection with travel-related expenses.
20 Again, Your Honor, there's a variety of
21 relief sought in the motion with respect
22 to HSBC. Similarly, this matter has
23 been presented to the committee and
24 other parties. No one has filed an
25 objection. Unless Your Honor has any

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2 particular questions, we'd ask the -- we
3 have authority to assume we'd take the
4 actions outlined in the motion.

5 THE COURT: The debtors
6 couldn't get a replacement card?

7 MR. BUTLER: Your Honor, we
8 didn't seek to try to get a replacement
9 card here. The fact is that trying to
10 go through the process of taking all
11 these cards out, issuing all the other
12 cards, we actually, as I think we
13 explained to Your Honor on the first
14 day, we pre-funded a good portion of
15 this, on going into this, so I don't
16 believe, as of the -- while there was a
17 potential preference claim here, which
18 we've talked to the commit -- advised
19 the committee about, I don't think
20 there's anything owed, as of the
21 petition date --

22 THE COURT: Okay.

23 MR. BUTLER: -- the way in
24 which we structured this particular
25 transaction.

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2 THE COURT: All right. And
3 this is generally a -- these payments
4 are made generally by the debtors pretty
5 regularly?

6 MR. BUTLER: Yes, Your Honor.
7 They're paid on a monthly basis and some
8 of these are made directly and others of
9 them may be reimbursed through expense
10 agreements but they're all in the
11 process. This is basically used for two
12 purposes. For travel and in our plants
13 when people need -- and facilities --
14 people need to go out and get some de
15 minimis sort of asset, kind -- that's
16 how they go out and acquire them.

17 THE COURT: Okay. Does anyone
18 want to be heard on this motion? All
19 right. Based on my review of the motion
20 and Mr. Butler's comments and there
21 being no objections, I'll approve it.

22 MR. BUTLER: Thank you, Your
23 Honor. Your Honor, the next matter on
24 the agenda is matter number 14. This is
25 a motion seeking authority to reject

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2 what we called a Pacific Rim lease and
3 in this motion, what we're trying to
4 accomplish -- we no longer need to use
5 the master lease agreement with Pacific
6 Rim, Inc. This is a master agreement,
7 which involved the lease of assorted
8 machinery, equipment, and other items,
9 and we no longer need to use these
10 items, particularly because of the
11 reasons set forth in the motion having
12 to do with our operations in Foley,
13 Alabama. Your Honor, as a result of the
14 debtor's exercise of its business
15 judgment, we have determined it's
16 appropriate to reject this lease at this
17 time. There have been no objections
18 filed, either by the lessor, by the
19 committee or any other party.

20 THE COURT: Okay. I reviewed
21 the motion and it appears to be well
22 within the debtor's business judgment,
23 so I'll approve it.

24 MR. BUTLER: Thank you, Your
25 Honor. Your Honor, matter number 15 on

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the agenda is our motion for an order to
sell certain de minimis assets free and
clear of liens. It's essential -- and
to pay market rate broker commissions.
This is essentially a de minimis
procedures order that allows us to
operate in the ordinary course of
business with the disposition of de
minimis assets. There's a proposed
procedure here that would require that
we send notice in advance to the U.S.
Trustee, the unsecured creditors'
committee, the DIP lenders, any known
holder of a lien and the assets proposed
to be sold and any other known
interested party, with respect to the
particular asset involved. There's a
procedure that requires that if we don't
get a written objection or request for
additional time within five business
days, we can complete the transaction
and otherwise, if there is an objection
raised and we can't resolve it, we need
to come to court and deal with that

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resolution. There is a purchase price limitation here of greater than -- anything greater than ten million dollars, it requires to come to court. Given the company of our size, with our asset base, we think that's an appropriate level. We have agreed with the creditors' committee. Our financial advisors of the debtors and the committee are working together on a protocol so that the committee is comfortable on how that ten million dollars is analyzed. You know, Mr. Rosenberg's used to me the example of, you know, you've got a hundred million dollar asset on the books at book value, and you're going to get ten million dollars for it. That's probably not the kind of transaction that should be given the test, or not.

THE COURT: Test or not.

Actually, I put in here 'cause the ten million only works if it's an arm's-length market driven sale, so I put in

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2 without further Court approval and I
3 added the words arm's-length sale and
4 then you and the committee can work it
5 out beyond that --

6 MR. BUTLER: -- Right.

7 THE COURT: -- but the debtor
8 has to be comfortable with an arm's-
9 length sale. That's separate, but from
10 it not being to insiders.

11 MR. BUTLER: Right. And Your
12 Honor on that point, we've agreed to
13 work out a protocol with our financial
14 advisors. I think we've had pretty good
15 success, even in the last week or ten
16 days, on -- the financial advisor are
17 working very closely together and they
18 have perfections for the debtors and the
19 committee working closely together. In
20 the unlikely event that we couldn't
21 agree on a protocol, I'd say to Mr.
22 Rosenberg he can come back to court
23 here, with respect to this order
24 subsequently. But I can't imagine that
25 would be the case.

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THE COURT: Okay. I had a couple of other comments on this. Maybe I should give you those before I hear from anyone. In paragraph 4, I think the broker's affidavit should include an affirmation by the broker that the commission is at or lower than, in his or her reasonable belief, market commissions for similar sales. And then, paragraph C, which is the paragraph that gives a right to come. Paragraph C is a paragraph that lets people go to court, if they -- if you cannot resolve an objection. I just want to make it clear that the broker would be retained nunc pro tunc, given the rules in this circuit. There shouldn't be any concern on the broker's part about that. And then, lastly, on paragraph 6, which is the paragraph that says that the NATO's procedures shall not apply to sales of assets that involve an insider, I also added this concept and you can -- if you're not

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2 comfortable with the language, you can
3 adjust it, but what I had in mind was,
4 or any sale that because of the integral
5 nature of the asset would require the
6 debtor subsequently to sell additional
7 assets for an aggregate sum in excess of
8 ten million. And that wouldn't be
9 covered by this either. You'd have to
10 go to court for that.

11 MR. BUTLER: I understand that,
12 Your Honor. And, I should point out we
13 also agreed to give counsel of the
14 debtors pre-petition credit facility
15 notice of these transactions.

16 THE COURT: Right. Okay. So
17 does anyone else -- does anyone want to
18 be heard on this motion?

19 MR. ROSENBERG: Your Honor,
20 only to say that we were troubled by the
21 ten million dollar number for the reason
22 Mr. Butler said, but I will report that
23 I think that FTI, the debtors' financial
24 advisor, and Mezero, the committee's
25 financial advisor, have already

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2 established an excellent working
3 relationship and I have every
4 anticipation that we will be able to
5 work through what ten million dollars
6 really should mean, particularly in the
7 context of Your Honor's comments.

8 THE COURT: Okay. And again,
9 if for some reason, the committee or the
10 banks or anyone else feels this program
11 isn't working as it was intended, then
12 you can come back to court and seek
13 modification of the order.

14 MR. ROSENBERG: Very good, sir.
15 Thank you

16 THE COURT: Okay. But with
17 those changes in caveats, I'll approve
18 it.

19 MR. BUTLER: Thank you, Your
20 Honor. Item number 16 on the agenda is
21 a utilities motion. This is our -- the
22 final hearing on our motion for an
23 interim final order under section 366 to
24 deal with putting in essentially
25 alternative dispute resolution

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procedures to deal with utility deposits, perhaps the last of this kind drafted this way, that Your Honor will be hearing, given the changes in the new code. I think it will be, as I had mentioned at the first day hearings, I think there will be a slightly evolved version of these procedures that will come back even under the new statute. But as to these matters, we have alternative dispute resolution process here, that essentially tries to work out the deposit issue between the utility and the company and sort of vet the adequate assurance issues prior to coming to court. There were very few objectors to that relief. We did serve this as required by Your Honor. There were very few objectors that overall -- that filed an objection. And with respect to those objectors, we were able to resolve one or two of the objections, and more importantly, all the other objectors agreed that they wanted to

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continue to work on this with the
debtors and asked that -- and agreed
that the order could enter on a final
basis as to all others but them, and we
would continue to work with them and
deal with them on November 29th, if we
can't come to a satisfactory resolution.
The form of black-lined order we
submitted, Your Honor, reflects that
agreement.

THE COURT: Okay. I had a
couple of changes to this one also,
consistent with how I've done these.
And I know that different courts have
different procedures for this type of
motion. They basically had to do with
the provision that you have in here in
paragraphs 6 and in paragraph 9, which I
think works for an interim order but not
for a final order. The provision says
that unless the utility makes a request
within 25 days of the receipt of this
order, they can't make any other
requests. And since I think the statute

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contemplates changed circumstances and
the utilities rights in a lot of changed
circumstances, I changed that in the
third line. So, instead of saying
within 25 days of the date of service,
hereof request deadline, I just said and
based on materially changed
circumstances on the date hereof. A
similar concept is baked into paragraph
9 for the utilities that you discover in
the future that you might have had that
didn't get notice of this --

MR. BUTLER: Yes, sir.

THE COURT: -- And, it again,
consistent with that case log on this
pre-October 17th and this circuit, this
order provides that the utility
companies can't unilaterally terminate
service, even the ones that you discover
in the future, unless there's a court
order. But I think they should be free
to come in to ask for that type of
relief. The other change is in
paragraph 7, it gives the debtors 45

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days to set up a determination hearing.
And I've just added, consistent with the
Court's Case Management Order, the
utility company may seek an earlier
hearing. In all likelihood, it probably
would be within that time frame anyway,
but if there's some emergency, they
could do that. But, seeing no
objections in hearing, I'm going to
approve it on that basis.

MR. BUTLER: We'll make those
changes, Your Honor, and submit the
order. Thank you.

THE COURT: Okay.

MR. BUTLER: Your Honor, the
next matter on the agenda is matter
number 17. This is a motion for an
order authorizing the rejection of a
license agreement with DuraSwitch
Industries, Inc. Again, Your Honor,
another rejection motion dealing with,
in this case, a license agreement that
was entered into in April of 2000. It
was an exclusive license agreement for

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2 technology that facilitated electrical
3 connections within a vehicle, and rather
4 than go through a litany of what's in
5 the motion or in a presentation, Your
6 Honor, the basic punch line in this one
7 is that we and counsel for DuraSwitch
8 have agreed on agreed form of rejection
9 order, and we have submitted it to the
10 Court.

11 THE COURT: Okay. I reviewed
12 the motion and it's clearly within the
13 debtors' business judgment and also the
14 revised order, which looks fine.

15 MR. BUTLER: Thank you.

16 THE COURT: Does anybody want
17 to be heard on this? All right, hearing
18 no one, I'll approve it for the reasons
19 stated in the motion.

20 MR. BUTLER: Thank you, Your
21 Honor. Your Honor, the next matter on
22 the agenda is the final hearing on our
23 cash management motion. There were two
24 objections that were filed. Both of
25 them, perhaps it shouldn't be surprising

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to any of us, dealt with the same thing we talked about at the interim hearing, which was that pesky paragraph dealing with what should happen in the event that in intercompany transfers there was a net borrower and a net lender and what the relationship should be between the two entities within the debtor's system. Your Honor may recall that the subject, the discussion, and the debate at the first hearing had to do with whether that -- there should be a prior -- administrative claim and what priority it ought to have, be it super-administrative, super-priority or others. That has evolved, now, into the view that there actually -- it shouldn't be just a claim, it should be a lien. And we have actually entered into an agreement with the Pension Benefit Guaranty Corporation as to the language that's in the order that's acceptable to them. It is a lien. They're the entity that has a control group liability claim

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against all those entities and the
priority of that lien is determined by
the DIP financing order. The creditors'
committee has reserved or objected on
the issue. I think it was actually a
statement that was submitted, so I'll
call reserve for the moment, but have
raised an issue as to whether that lien
ought to have a higher priority. They
would prefer the priority be right below
the DIP lenders and the DIP financing
order calls for that priority to be
junior to various categories of
claimants, the DIP lenders, the pre-
petition lenders and the setoff
claimants. That is the only issue I
think that exists with respect to the
cash management order that I'm aware of.
And the -- and my suggestion would be,
Your Honor, that we -- the Court reserve
on that matter until you hear the DIP
financing motion. Because I think,
ultimately, Your Honor's going to be
dealing with the DIP financing issues

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2 and depending on how you come out on
3 those I think Mr. Rosenberg and I will
4 be able to work this one out.

5 MR. ROSENBERG: Yeah.

6 THE COURT: Okay.

7 MR. ROSENBERG: Your Honor, I
8 have no problem as far as Mr. Butler
9 goes. Obviously, the two have to be
10 consistent in terms of the priority of
11 the liens and I will argue passionately
12 for that priority --

13 THE COURT: Okay.

14 MR. ROSENBERG: -- at the
15 appropriate time. We did raise another
16 issue, however, in our statement, which
17 was that a lien is only as good as the
18 assets and cash flow backing it up. And
19 we do want and need a mechanism to
20 assure that however it is secured, it
21 can be repaid. I would hope that we
22 could do that via some kind of a
23 protocol, but it is not the case that if
24 Your Honor simply grants a lien, we go
25 away happy.

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2 THE COURT: Right. I actually
3 had the same concern and it comes up in
4 the cash management contacts, but
5 there's some point where intercompany
6 transfers really do turn into serious
7 lending decisions. Maybe that never
8 happens in this case because everything
9 balances out, but there should be a
10 process whereby the appropriate
11 professionals for the committee are kept
12 up to speed on both net balances and I
13 guess, also, you know, the same type of
14 information that a board would consider
15 in continuing to authorize its debtor to
16 extend credit to another debtor. That
17 is, I guess, the financial payoff of the
18 other debtor. I expect that such an
19 analytical process will be undertaken by
20 each credit provider anyway, so I'd hope
21 that, and expect, really, that whether
22 it's the committee's financial advisor
23 or counsel would be kept informed of
24 those decisions on, you know, a
25 reasonably current basis, like every

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2 month or maybe even every two weeks.
3 And if there's any -- in particular,
4 what I have in mind is any large
5 increase in exposure by another company
6 lender or substantial decline in the
7 fortunes of an intercompany borrower
8 that it would raise a red flag about
9 lending.

10 MR. BUTLER: Your Honor, on
11 that point I agree with Mr. Rosenberg.
12 I don't view this protocol as being a
13 difficult one for us to resolve. We
14 contemplate this being part of the
15 monthly reporting package to the
16 committee. Your Honor should know we
17 already established between us a
18 consensual schedule of meetings that, at
19 the moment, go out all the way till next
20 March. In terms of dates, we're meeting
21 every month as a full group of debtors
22 and committee representatives and we'll
23 make sure this is part of the monthly
24 reporting package.

25 THE COURT: Okay. But -- I'm

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2 serious about this. I don't think there
3 should be a sort of an automatic yes by
4 a particular debtor's management, which
5 overlaps obviously to a borrowing
6 request. I mean, this is not just
7 simply, we need, you know, ten million
8 dollars. Okay, here it is. There needs
9 to be some analysis of the ability to
10 repay that.

11 MR. BUTLER: Right. Well, Your
12 Honor, I think tempered with that is the
13 fact that, you know, these are -- as you
14 look at these inner companies, the vast
15 majority of them are wholly owned. And
16 the benefit of that enterprise inures to
17 the overall benefit of the business.

18 THE COURT: Well, that's
19 another -- you know, it depends on who
20 the creditors are. If --

21 MR. BUTLER: Right.

22 THE COURT: If there's a lot of
23 overlapping debt, than maybe it's not
24 much of an issue. --

25 MR. BUTLER: Yeah. And in

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2 fact, Your Honor, well, this is for
3 another day, but the reality is the
4 majority -- we'll eventually get to a
5 point in this case where we'll look at
6 where all the debt is -- The majority of
7 the debt, say the liens that attach from
8 the banks, and now some of the
9 replacement liens granted in the
10 proposed financing order, and the PBGC's
11 position. The majority of the other
12 debt of the company is not at these
13 entities.

14 THE COURT: Well --

15 MR. BUTLER: That will be for
16 another day, but --

17 THE COURT: -- that should make
18 the protocol easier. I mean, there's no
19 reason the committee needs to get into
20 this in a great deal of detail if, in
21 fact, no creditors are even potentially
22 hurt by a loan from one company to
23 another.

24 MR. BUTLER: All right.

25 THE COURT: So let's reserve on

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2 the lien priority issue till the
3 discussion of the debt -- the language
4 is the same in both orders, right?

5 MR. BUTLER: Yes, Your Honor.

6 MR. SOMERSTEIN: Yes, Your
7 Honor. Good morning, Your Honor.

8 MR. ROSENBERG: Only objections
9 to it.

10 MR. SOMERSTEIN: Good morning,
11 Your Honor. Mark Somerstein, Kelly Drye
12 for Pension Benefit Guaranty
13 Corporation. Your Honor, I would just
14 note that PBGC is not a member of the
15 creditors' committee and we'd appreciate
16 the opportunity to participate with Mr.
17 Butler and his team, and Mr. Rosenberg
18 and his team, in reviewing the protocol
19 so that we could see the information on
20 the intercompany borrowings.

21 THE COURT: Okay.

22 MR. SOMERSTEIN: I'm sure
23 that's something we can --

24 THE COURT: -- well, maybe --
25 again, I would just urge you to focus in

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2 on the borrowers that are of concern to
3 your client.

4 MR. BUTLER: Your Honor,
5 although, I know the PBGC and we're
6 actually, at some point, we'll weigh in
7 on that. We've been working with the
8 PBGC in terms of their efforts to seek
9 membership on the committee. But we
10 don't want to get in position of saying,
11 what the committee gets to do, other
12 people get to do.

13 THE COURT: Well, I agree with
14 that --

15 MR. BUTLER: We're not asking
16 --

17 THE COURT: -- but I think this
18 is a specific issue that we all know the
19 PBGC is focused on, besides the
20 committee. And, if it can be done in a
21 way that really focuses in on their
22 obligors in an efficient way, then I
23 think you can do that.

24 MR. SOMERSTEIN: That's exactly
25 what we're talking about, Your Honor.

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2 Thank you.

3 THE COURT: Okay.

4 MR. BUTLER: Your Honor, that
5 brings us to the only other matter on
6 the agenda, matter 19, which is the DIP
7 financing hearing, which is contested.
8 Your Honor, we'd like to ask for a brief
9 recess so that we can set up for the
10 hearing and try to resolve a few
11 additional issues. You know, no more
12 than 30 minutes, hopefully less.

13 THE COURT: Okay. So why don't
14 I come back here at 11:30?

15 MR. BUTLER: Thank you, Your
16 Honor.

17 THE COURT: Okay.

18 (Recess at 11:04 a.m.)

19 THE COURT: Please be seated.
20 Okay, we're back on the record in Delphi
21 Corporation.

22 MR. BUTLER: Your Honor, thank
23 you for allowing us to take an extended
24 lunch recess. I hope the Court will
25 believe it was constructive. The

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debtors certainly believe it was with the help of a number of principal stake holders, we've been able to resolve a number of the objections to the DIP financing motion, which is the next matter on the agenda. That's matter number 19 on the agenda and our last matter for today. And the resolution was also resolved, matter 18, cash management motion that has been reserved.

THE COURT: Okay.

MR. BUTLER: Your Honor, what I'd like to do is reorganize the hearing slightly and report to the Court on a number of the settlements, and then move to an abbreviated evidentiary record.

THE COURT: Uh-huh.

MR. BUTLER: I believe we resolved all the objections that went to the issues as to whether there should be a DIP financing put in place. I think we have addressed, by the majority of objections that would like adequate

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2 protection. I believe that some of the
3 setoff claimants may still raise issues
4 and I believe Bank of America may raise
5 certain issues. Those issues, I don't
6 believe, based on review of the
7 objections go to the heart of whether or
8 not we've complied with 364(d) on those
9 kind of issues. So what I propose to do
10 is to describe, in general terms, the
11 settlements that had been reached, so
12 that everyone is informed. I also am
13 able to answer any questions the Court
14 has and then move to an evidentiary
15 record the admission of exhibits and
16 proffer it for the Court. We have the
17 witnesses available, but I don't know,
18 unless Your Honor wants us to get live
19 testimony, whether anyone else will seek
20 it.

21 THE COURT: Okay. Well, I take
22 in proper and then, obviously, if
23 someone wants to cross-examine them,
24 they can do that.

25 MR. BUTLER: Your Honor, this

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is, as the Court knows, a motion that we had filed. This is the final hearing before the Court on approval about 40 would obtain and move forward on 2 billion dollars of committed DIP financing from JP Morgan Chase Bank NA as administrative agent and CitiCorp USA as syndication agent. Along with a group of other financial institutions that have been arranged by JP Morgan Securities Inc. and CitiGroup Global Markets Inc. The DIP facility is before the Court today includes both a 259 dollar term loan and a 1.7 billion dollar revolver. There's a sub-limit, as I advised the Court at the interim hearing, about 325 million dollars for letters of credit and under the terms of this financing, it would prime approximately 2.59 billion dollars worth of pre-petition revolver and term loan facilities under the terms of the order. And we also have dealt with, in this order, how setoff and related rights,

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2 including recoupment issues, would be
3 addressed going forward in this case in
4 an orderly manner. It is the company's
5 view, Your Honor, that we have hit what
6 we believe to be a very complex set of
7 issues what I'll call the sweet spot of
8 an order that balances the interest of
9 all parties here in an orderly manner
10 and allows the company to move forward
11 in these cases. Your Honor, there was
12 only one objection that was filed, and I
13 should point out -- to begin with, Your
14 Honor, I'll move the admission of these
15 exhibits at the evidentiary portion of
16 this book could be used for the next
17 references now. Could I present an
18 exhibit book to the Court?

19 THE COURT: Sure.

20 MR. BUTLER: Your Honor, the
21 transaction that we're asking the Court
22 to approve is a transaction that is
23 evidenced by several documents and they
24 are marked as Debtors' 1, 2 and 3. A
25 commitment letter, a post-petition DIP

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2 financing agreement, which is Exhibit 2
3 and Exhibit 2a, which is a first
4 amendment to the revolving credit term
5 loan and guarantee agreement, which
6 includes an agreement as to the
7 borrowing base element of this
8 transaction. We have also filed with
9 the Court a proposed financing order
10 which has been black-lined on several
11 occasions and which we will suggest some
12 other changes to, in this hearing. But
13 the current form of that order in terms
14 of black-line is at Exhibit 4. That's
15 the black-line which represents the
16 current state of the order, subject to
17 the comments that we made on this
18 record.

19 THE COURT: Are those documents
20 the same as the ones provided my
21 chambers, I guess, last night?

22 MR. BUTLER: Yes, Your Honor.
23 There was a proposed order attached to
24 the original motion that was updated
25 with a final financial order that was

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filed with an omnibus reply. It was an exhibit of the omnibus reply; it was black-lined against the Court's interim order. We then had further negotiations and late last evening we reached agreement with the post-petition lenders, the pre-petition agent, General Motors Corporation and the company about the form of order. We black-lined that and we served it out last night, or overnight. We now have held the Court we put it out on the docket, we put it out on the website and we served all the parties with it, overnight.

THE COURT: Okay.

MR. BUTLER: There'll be some changes to that order today, although they are relatively discreet, to resolve some of the issues that we have before the Court. So that the documents we're asking Your Honor to approve would be the loan agreements on 2 and 2a and the financing order as we make changes on the record today.

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2 THE COURT: And there are
3 agreements that reflect the amendments
4 that went out last night, too.

5 MR. BUTLER: Yeah, Your Honor.
6 The loan agreements didn't really need
7 much in the way of changing. There were
8 issues more about priorities and
9 relationships than anything else.

10 THE COURT: Okay.

11 MR. BUTLER: Your Honor, also,
12 Exhibit 28 and 29 to -- Debtors' 28 and
13 29 set forth a summary of all the
14 objections that were filed as of 12 noon
15 yesterday and the debtors' views on
16 those. Those actually -- Exhibit 28,
17 Debtors' Exhibit 28, is actually -- was
18 also Exhibit B on omnibus reply and
19 Debtors' 29 was Exhibit C to our omnibus
20 reply, which basically laid out the
21 objections that had been, from the
22 debtors' perspective, timely filed and
23 some others that had not been timely
24 filed, but which we were aware of prior
25 to the 12 noon deadline. We had the

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chambers to submit our omnibus reply.

Of all the objections listed in Debtors' 28 and 29, I believe the only objection that went to the issue solely of whether or not the debtors could enter into this priming facility was the objection filed by the self-styled ad hoc committee of pre-petition lenders. The group we refer to as the Goodwin Proctor Group, represented by Mr. Brilliant and his colleagues, which had filed objections really alleging, essentially, that the company couldn't sustain its burden on Section 364 of the Bankruptcy Code and further, even if could, that the company hadn't offered adequate protection. In connection with that transaction -- with those objections, we also filed a reply and there are a couple of items and some changed circumstances that I want to reflect on this record so the record here is complete. In connection with that transaction, and that is the DIP lending loan with the priming position,

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with respect to the 2.59 billion dollars of pre-petition debt, there was a notice -- there was a position that the pre-petition agent took and that was communicated to all of the members of the pre-petition bank group, and the members of the pre-petition bank group then took votes on two discreet elements which are relevant to today and perhaps relevant to the case. And, the notice that the pre-petition agent sent out is Debtors' 22, which is the actual notice in which the debtor -- the approached agent took two positions. First it had taken a positing that, absent instruction to the contrary, it was not going to object to the debtors' request to enter into this transaction, and it asked the members of the group to give a reflect on that. Second, it had told the group that it intended to inform the debtors that the debtors would not be able to renew live or based interest contract arrangements as they expired.

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2 I believe, beginning on or around
3 November 15th of this year, and also
4 sought direction from the lenders on
5 those issues. With respect to the first
6 matter, there were 42.88 percent of the
7 members --

8 THE COURT: I'm going to
9 interrupt for just a second. Please
10 turn off your Blackberries. Anytime
11 that sound -- sounds like a little bee
12 buzzing, the transcript gets interrupted
13 by your Blackberries. Okay, you can go
14 ahead Mr. Butler.

15 MR. BUTLER: Okay. Your Honor,
16 in that vote that was taken, 42.88
17 percent of the holders of the pre-
18 petition debt affirmatively agreed with
19 the position of the pre-petition agent
20 not to object to this transaction.
21 Approximately 14 percent of the holders
22 objected and directed the agent to
23 object to this transaction. And
24 approximately somewhere in the
25 neighborhood of 33 percent did not vote,

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but under the terms of the solicitation from the agent were deemed to have consented to the agent's approach; not consenting to the priming but to the actions to be contemplated by the agent. Which meant that, essentially, about 86 percent of the bank group concurred or deemed with concurred with the agent's decision not to object to this transaction. However, with respect to the issue of ABR, and this is different than it was reflected in our papers because we had different information and it was incorrect, and I want the record to be correct. Fifty-six percent of the members of the bank group concurred with the agent's determination to no longer permit LIBOR agreements, LIBOR based interest rate agreements with the debtors, and the balance did not vote but were deemed to have concurred under the terms of the solicitation. So essentially, at least this follows, insofar as the pre-petition agent was

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concerned, there was consensus among the bank group that the agent would inform the debtors that when a LIBOR-based contract expires, on or about November 15th, they would not seek to renew them. Now, the debtors' position is that that action may or may not be enforceable under the terms of that agreement. And given the fact that we're in chapter 11, at the moment, and therein obviously lies one of issues that ultimately may need to be determined by this Court. But it is, I think, a significant materially changed fact from the state of the papers before the Court, that there was unanimous consensus, at least deemed consensus among the pre-petition holders to move to an ABR rate. Now the ABR rate, Your Honor, the difference between the two rates is about 160 basis points, it's about 37 and a half million dollars a year on an annualized basis, something along the ways in additional interest costs. And that would be the

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contract rate interest. And, Your Honor, those items are discussed in some detail in Debtors' 17, 18 and 19, in terms of the exhibits that are before the Court, about how those particular transactions work. In addition, there are other claims under the pre-petition loan agreement that could, according to some holders of the pre-petition debt, be claimed for both default interest and incremental 200 basis points and other damages and costs or claims associated with any prepayment or payment of the term loan not in accordance with the terms of that term loan, by the prepayment premiums or call premiums or damages or whatever the claims may be. Essentially, what we have entered into an agreement to do, which we understand involves, in all respects, any objection by Mr. Brilliant's clients to this hearing, is we've agreed that the -- and I'll read some language in a moment -- but essentially we've agreed that the

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pre-petition agent can put up, what's called interlinks, the internet-based application in which it communicates with its 250-odd plus lenders and opportunity for any holder to waive its claim on a permanent basis, to default interest under the pre-petition facility, and waive its claim under any basis to any call premium, prepayment premium, other kind of claim against the company for the prepayment other than in accordance with the contract of amounts owed under the pre-petition instrument. Any holder which waives those two claims would then be entitled to receive the ABR rate for the balance of this case. Actually, for the balance of the time the indebtedness is outstanding in accordance with the terms of the loan agreement. But the applicable rate paid to that holder would be ABR as opposed to LIBOR. If someone does not waive those claims they would be paid, as adequate protection, the LIBOR rate;

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they would retain their rights to argue that the differential accrued and we would also fight about whatever other claims they had including default interest claims and other kinds of compensatory claims at the end of the case in the proof-of-claim process. And that was the fundamental agreement reached. We've also agreed, under the terms of the adequate protections package, to pay the reasonable expenses the pre-petition agent and, through the date of this hearing, only the reasonable expenses incurred by Mr. Brilliant's group in terms of the fees and expenses of his firm.

THE COURT: In connection with opposing the debt?

MR. BUTLER: Correct. But only in connection with matter, only to the date of this hearing.

MR. BRILLIANT: Your Honor, if I may. Two minor issues, it's ABR plus applicable margin and it's the fees of

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2 my firm and we had hired, you know,
3 conflicts councils to serve some of the
4 subpoenas with respect to what we had a
5 conflict, and that's covered in the
6 order as well.

7 THE COURT: Okay.

8 MR. ROSENBERG: Mr. Butler, I
9 assume that we will get notice of the
10 fee request and then have a say in the
11 reasonableness involved?

12 MR. BUTLER: Absolutely.

13 MR. ROSENBERG: Thank you, sir.

14 THE COURT: Okay.

15 MR. BUTLER: The change to the
16 order occurs, Your Honor, on this pre-
17 report, and I want to be specific
18 because this was reviewed with a number
19 of the parties. The change in the order
20 here occurs in paragraph 12C. And if
21 the Court uses -- refers to Debtors' 4
22 and uses that black-line and it goes to
23 page 30, and this is the same black-line
24 that's been distributed to virtually
25 everyone in the courtroom, or people who

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have, at least, access to it. It's also posted on delphidocket.com for those participating by telephone. If we go to page 30 there's an insert that occurs in Roman numeral III about eight/nine lines down. There's a phrase and it says, and letter of credit and other fees at the non-default contract rate. Then there's a word, applicable, between the word rate and applicable there is the following insertion. Including at the option of the borrower the Euro dollar rate plus the applicable margin. And then on the next line where it says provided back, and after the work back, we insert the symbol X(x) because there's going to be a Y in a moment. And then we continue down just before roman numeral IV and we add there a Y in the hole and insert the following statements. "Notwithstanding anything to the contrary, in this order or the pre-petition credit agreement, as to each pre-petition secured lender which

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executes and delivers a written consent in the form to be provided by the pre-petition agent(which consent shall be informed and substance reasonably satisfactory to the borrower), waiving and releasing all claims, if any, in respect of default interest. And any claims related to the prepayment of the pre-petition debt including any prepayment premium under the pre-petition credit agreement, interest shall accrue and be paid by the borrower on the first business day of each month at ABR plus the applicable margin in respect to the pre-petition loans held by such pre-petition secured lender from and after the labor of A, the expert existing LIBOR contracts and B, the delivery of such release and waiver."

THE COURT: Okay. Go ahead.

MR. BUTLER: And then on page 31, there is a statement that says, at the end of paragraph C, before that at paragraph sub D, it says, the debtor

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shall pay the reasonable and documented fees and expenses of counsel to the ad hoc committee of pre-petition secured lenders in connection with the motion and we have an agreement as to a cap on that, which we had discussed off the record, Your Honor, with that group and we'll obviously with other parties of interest. And, you know, the reasonable fees cannot exceed a capped amount.

THE COURT: And these are just legal fees, right?

MR. BUTLER: Yes, Your Honor.

THE COURT: Okay.

MR. BUTLER: And then, Your Honor, we would insert an insert there that would also say, during dependency of the Chapter 11 case, and accept as otherwise set forth in a any confirmed reorganization plan, the pre-petition debt of any pre-petition secured lender shall not be repaid or refinanced in whole unless it is part of a transaction in which the obligations under the DIP

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credit agreement and the pre-petition
credit agreement are repaid or
refinanced in whole, or, if such pre-
petition secured lender consents to such
repayment.

THE COURT: Okay.

MR. BUTLER: Your Honor, that
represents the entire agreement between
Mr. Brilliant's clients and the debtors
and fully resolves their objection. I'd
like Mr. Brilliant to confirm that on
record.

THE COURT: Actually, before we
do that, and I apologize for
interrupting, if there is the LIBOR and
the debtor agrees that they won't object
to the interest that's being received
except if, for some reason, your total
won't be secured.

MR. BUTLER: Your Honor, what
we've agreed to is -- there are other
rights in lieu of the benefit of the
creditors' committee which have been
negotiated, which I'll get to in a few

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minutes. But for example, payments received under this order are subject to recharacterization and we'll get to that. You know, if under the appropriate circumstances, recharacterization is appropriate, that right has been reserved and Mr. Rosenberg will talk about it a little bit later on.

THE COURT: The reason I'm

losing this is that in paragraph 16, on 38 and 39, in addition to the reservation of rights for the committee, the debtors reserve their rights to argue the appropriateness of any interest rate charged or claimed by the pre-petition's secured lenders, and I'm wondering whether you need to have certain cross-reference now to this new agreement, at least in respect to the waivers, or not. I'm just raising that for you.

MR. BUTLER: As always, Your

Honor, you're the best lawyer in the

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2 courtroom and you're absolutely right.

3 The only recharacterization would be if
4 we were undersecured and otherwise there
5 would be no opportunity to challenge the
6 ABR plus applicable margin rate on a go
7 forward basis.

8 THE COURT: Well, I'm probably
9 a lot smarter than any king in charge,
10 but let's make sure Mr. Butler agrees
11 that once the waiver comes in you're not
12 going to be able to object.

13 MR. BUTLER: That's correct,
14 Your Honor. I was going to restate that
15 at the end of that statement.

16 THE COURT: So we probably have
17 to add some cross-reference then in,
18 paragraph 16.

19 MR. BUTLER: We'll make that
20 cross-reference, Your Honor.

21 THE COURT: Okay.

22 MR. BUTLER: Mr. Brilliant.

23 MR. BRILLIANT: Thank you, Your
24 Honor. Alan Brilliant for the Goodwin
25 Proctor Company, the ad hoc committee of

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2 pre-petition secured lenders. Your
3 Honor, the agreement read into the
4 record by Mr. Butler accurately reflects
5 the agreement and upon approval of said
6 settlement by Your Honor, our committee
7 would withdraw our objection.

8 THE COURT: Okay.

9 MR. BRILLIANT: Your Honor, I
10 would also like to thank Your Honor and
11 your chambers for your accommodations
12 over the last week. It's obviously been
13 a very hectic week for you all, not just
14 this case, but other things and we
15 really appreciate your accommodating us
16 until findings hearing yesterday.

17 THE COURT: That's fine. And
18 speaking of accommodating, are the
19 people who got the trial subpoenas, have
20 they been released of that one?

21 MR. BRILLIANT: Yes, Your
22 Honor, when we reached the settlement
23 agreement we immediately released them.
24 Everybody was happy to go except for one
25 counsel, GE's counsel, who apparently

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wants to leave open their right to seek,
you know, sanctions for the filing of
the subpoena. I believe your clerk has
given them, you know, a further date and
if we have to, we'll come back and
respond to it.

THE COURT: All right. Well, I
hope you don't have to deal with that.

MR. BUTLER: Your Honor, the
next item that I'd like to deal with is
the agreement that has been reached in
which a number of parties played a role
but it resolves, the objection of it
resolves is the objection of the
creditors' committee that was filed, or
the statement of the creditors'
committee, I should say, was filed. And
there's a package of information here
that I want to get out and I know Mr.
Rosenberg will help me if I get it
wrong. But I think I have the
understanding and Mr. Zimen's interests
were implicated and I think he will
address these as well. But the

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agreements reached have been reached as follows, and these agreements which will be reflected in the order will result in the withdrawal of the statement, or at least the committee's agreement that the order ought to be entered with these changes. First, the DIP agent will agree that it does not have the right to waive the intercompany leaves that were subject of the cash management order and the subject that Your Honor talked about, the subject of this order. There was a suggestion in the order that they had that right and that's being modified. Second, that to the extent that there's going to be a change in the borrowing base or in the financial covenants, we will give -- the debtors will give reasonable advance notice to the creditors' committee of those events. And seeing as we provide the information to them on a monthly basis, I don't see that as a burden, Your Honor.

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2 THE COURT: Can I interrupt?

3 This is a suggestion, I don't know if
4 this actually is the case, but, the
5 carve-out could be affected by
6 modification to the borrowing base. At
7 least when I read it, is that possible?

8 MR. BUTLER: I don't believe it
9 is. I'll ask the counsel for the DIP
10 lenders whether they agree with that. I
11 don't think the carve-out can be changed
12 in any respect on account of the
13 borrowing base.

14 MS. O'DELL: Maureen O'Dell for
15 the DIP lenders. The borrowing base
16 typically just gives you the amount of
17 approved unpaid. I think that's the
18 only relationship between the two.

19 THE COURT: Okay. Thank you.

20 MS. O'DELL: The carve-out can
21 impact the borrowing base, but not vice
22 versa.

23 THE COURT: Okay. All right.

24 MR. BUTLER: Your Honor, the
25 next item is to the extent that the

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2 debtors received notice from the DIP
3 lenders that there is a triggering event
4 in connection with a carve-out. We had
5 agreed to provide a copy of that written
6 notice immediately to the creditors'
7 committee council.

8 THE COURT: Okay.

9 MR. BUTLER: Fourth, Your
10 Honor, to the extent that there's a
11 triggering event of the carve-out and
12 that triggering event is later resolved
13 or waived so that there's not a
14 continuing event of default, the
15 agreement is that the carve-out would be
16 refreshed or would spring back to the
17 original amount Your Honor is
18 considering approval of today.

19 THE COURT: Okay.

20 MR. BUTLER: Your Honor, I'll
21 mention, also on the record, that there
22 was an inconsistency between the credit
23 agreement and the draft order with
24 respect to the carve-out language. The
25 credit agreement was correct; the order

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2 was incorrect. There are a few words
3 that have to be modified in connection
4 with that, but it would be consistent
5 with the negotiated carve-out language
6 that's in the credit agreement.

7 THE COURT: Okay.

8 MR. BUTLER: Your Honor, the
9 next item goes to the investigatory
10 periods with respect to matters related
11 to the pre-petition lenders. Currently
12 all of the matters have, under the order
13 -- are proposed to have a 90-day window
14 which can be extended, I believe it's
15 for cause upon motion to the Court.
16 Some of those rights are going to be
17 carved out and put in separate buckets
18 and extended for 180 days, subject to
19 the same motion that can be filed to
20 extend for cause. And that would have
21 to do with the committee's review of any
22 causes of action and the releases the
23 debtors have given under these
24 agreements, under the order. And
25 second, the question as to the

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2 oversecured status of the pre-petition
3 lenders.

4 THE COURT: And that will be in
5 180 days?

6 MR. BUTLER: That will be 180
7 days.

8 THE COURT: Plus the
9 opportunity to come to Court.

10 MR. BUTLER: Correct, Your
11 Honor.

12 THE COURT: Okay.

13 MR. BUTLER: Your Honor, there
14 are a few places in the order where, in
15 talking about adequate protection of the
16 pre-petition interest, the phrase --
17 we're going to correct it to make sure
18 it tracks the statute and refers to
19 value -- their interests in the
20 collateral. Your Honor, also in
21 connection with investigatory rights
22 being granted to the committee, the
23 parties would agreed, that the
24 committee, if they determine there was a
25 basis to file an action, they would have

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agreed or deemed standing to do so. The
thought process behind there is the
debtors have already waived their
interest in that respect and therefore
it would futile to make demand on the
debtors to prosecute before and then
seek the Court's approval. So, they
would have agreed standing to file the
complaint before this Court.

THE COURT: All right. People
still have the right to say, once it's
filed, we don't need to pursue it on a
fast track, or anything like that?
Parties of interest still have the
opportunity though, to try and persuade
me that once it's filed, it doesn't have
to be pursued on a fast track or, you
know, the scheduling issues are
reserved, right?

MR. ROSENBERG: Certainly, Your
Honor.

THE COURT: Okay.

MR. BUTLER: Your Honor, the
next -- I hope I get this correct. The

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next issue -- or the next agreement is a bundling issue of rights that are either waived or not waived vis-a-vis what the committee wanted and the pre-petition lenders want as part of the adequate protection package. And they implicate section 506(c), 507(b) and 55 -- excuse me 506(c), section 551 of the code and interest in the proceeds in avoidance actions. The agreement would be that the existing 506(c) waiver proposed in the financing order will stand as drafted. However, the creditors' committee objection with respect to section 551 would be sustained and they would -- on that particular point. And there would be an agreement in terms of any interest the pre-petition lenders would have in avoidance proceeds under the terms -- or anyone else having to file a 7(b) in the interest of avoidance proceeds that the first thing that would be paid in priority would be the administrative costs of the estate in

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2 generating that fund or those proceeds.
3 So there would be, before any kind of
4 intervening interests could occur, the
5 administrative costs would be paid
6 first.

7 THE COURT: So that's the super
8 duper.

9 MR. BUTLER: Someone described
10 it to me, Your Honor, this afternoon as
11 a 506(c) interest and 507(b). I'm not
12 quite sure that's the right answer.
13 And, I don't want to confuse the record,
14 but the idea is that's it's that basic
15 concept.

16 THE COURT: Okay. On that
17 general topic, I don't know if this was
18 omitted on purpose or inadvertently, but
19 the avoidance actions that are listed
20 don't include 553, the avoidance
21 provision for setoff rights. Is that
22 the improper setoffs? Was that
23 intentional or is that just a --

24 MR. BUTLER: I think that was a
25 drafting glitch, Your Honor. I'll

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2 correct it.

3 THE COURT: So that should go
4 on that list then.

5 MR. BUTLER: Your Honor, I
6 believe that the statements that I had
7 made on the record reflect the
8 understandings between the debtors, the
9 pre-petition agent, the post-petition
10 agent and the creditors' committee on
11 these matters. And, if accepted and
12 approved in the final order to be
13 submitted, would result in the
14 creditors' committee deemed the
15 statement to have been withdrawn or
16 satisfied or however one wants to
17 characterize it. And I'll ask Mr.
18 Rosenberg to confirm that on the record
19 after making one additional statement.
20 And that is, if Your Honor is in the
21 position to grant the changes we set in
22 the record today, it is important to get
23 a final order in place and we'd like,
24 Your Honor, when we get to the end of
25 the this, sir, Your Honor is prepared to

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grant this relief because we still have
a ways to go. We would like Your Honor
to be able to -- have Your Honor
indicate that the financings been
granted so we could issue the
appropriate press releases to see if we
can get there, but I think we would like
to submit the order tomorrow morning to
chambers, so that there's a number of
people, but at least the committee -- I
want the opportunity to make sure that
they got all the wording correctly.
We're not, by doing this, inviting
fifty-five or seven people to a drafting
session tonight. We've had a number of
those because our intention is to simply
conform the order to the agreements
placed on this record; not to redraft or
renegotiate it. And, Your Honor, our
request would be that to the extent
there was any disagreement about that,
by any party, we would come back for
purposes of settling the order, not in
terms of revisiting the substance of the

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2 approval of the transaction, if we get
3 there.

4 THE COURT: Uh-huh. Okay.

5 MR. BUTLER: Mr. Rosenberg.

6 THE COURT: Before he -- or
7 maybe he'll raise this, but -- am I
8 right then that the resolution on the
9 borrowing base point which was just
10 limited to recruiting, does that mean
11 that other material modifications of the
12 debt do come back for Court approval?
13 That was an issue I think the committee
14 raised and I understood the bank's point
15 about the borrowing base, but if you're
16 going to change anything else
17 materially, you come back here?

18 MR. BUTLER: Your Honor, if we
19 were making any material change in the
20 negative covenants, the financial
21 covenants, or those issues that we
22 didn't have the consent of the
23 committee, I think we would come back
24 here. If there's an agreement between
25 the two parties, you know, unless we

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2 thought -- you've asked us in the
3 beginning of this case to use our
4 judgment of what we think you'd want to
5 hear about. And, if either of us
6 thought that was the case, we, of course
7 would bring it back to a monthly omnibus
8 hearing.

9 THE COURT: And I understand
10 there's the point about successful
11 syndication, or maybe things were
12 changed there in connection with the
13 syndication, but --

14 MR. BUTLER: But that's part of
15 the approved flex arrangement, Your
16 Honor, in any event.

17 THE COURT: Right.

18 MR. BUTLER: And, we would not
19 come back to Court for that.

20 THE COURT: Right.

21 MR. BUTLER: Your Honor, one
22 clarification. One of the agreements I
23 mentioned the word negative covenants, I
24 should strike that, that was not the
25 arrangement with the DIP lenders and the

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2 committee agrees with that, it was the
3 financial covenants that were implicated
4 there, I just want to make sure the
5 record's clear.

6 THE COURT: All right. That's
7 fine. I think you may need to do
8 something on page 3, roman numeral II
9 just to -- I'm sorry, page 13 not pages
10 3. Page 13 roman numeral II dealing
11 with that issues. I think it's
12 beginning to look, now, a little
13 different than what's been stated on the
14 record.

15 MR. BUTLER: Your Honor, I
16 should also point out that the agree --
17 we'll make that change. I really want
18 to point out on the record is -- Your
19 Honor, is that in consideration for this
20 package the committee has agreed that
21 the priority for intercompany claims and
22 liens that are set forth in the cash
23 management order that was submitted and
24 in the DIP proposed financing order are
25 no longer objectionable to the

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2 committee.

3 THE COURT: So what I'm hearing
4 is, it's fine for both orders, then.

5 MR. BUTLER: Correct. The
6 language was negotiated with the Pension
7 Benefit Guaranty Corporation is now
8 acceptable to the committee.

9 THE COURT: Okay.

10 MR. BUTLER: Your Honor, I
11 believe that --

12 THE COURT: Just a second.
13 This statement confirmed, and it was
14 confirmed on the record that despite the
15 recital about being a web secured, these
16 payments themselves that were made are
17 subject to recharacterization to the
18 extent that 506(b) would require the new
19 DIP expose of the interest.

20 MR. BUTLER: That is correct.

21 THE COURT: Okay. I think
22 that's particularly valuable on page 15,
23 which is the mechanism you worked out
24 for pleading down of the principal on
25 the pre-petition debt. You have asset

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2 sales. I think at the end of that first
3 full paragraph that's claiming company
4 shifting, you should have a proviso that
5 provided further that such prepayments
6 should have been laid over to the extent
7 that such loans are not secured claims
8 on under Section 506(b) of the
9 Bankruptcy Code.

10 MR. ZIMEN: Your Honor, can I
11 be heard on the point?

12 THE COURT: Sure.

13 MR. ZIMEN: Ken Zimen, Simpson
14 Thacher and Bartlett on behalf of JP
15 Morgan Chase Bank as pre-petition agent.
16 The language Your Honor focused on is
17 actually a prepayment of the DIP --

18 THE COURT: Oh, that's the DIP?

19 MR. ZIMEN: The resolution of
20 this issue that was an issue that was
21 raised with the debtors to provide
22 greater protection for the holders of
23 pre-petition secured claims was to
24 either require one of two things. After
25 125 million dollar basket, the debtors

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can use massive sale proceeds to take
two thirds of the excess and to apply
that either to reduce the DIP
permanently, thereby reducing the
priming, or to hold as cash collateral
for the benefit not only the DIP
lenders, but the pre-petition lenders
and also the setoff claimants.

THE COURT: All right. So what
-- that's fine.

MR. ZIMEN: And I'll also point
out for Your Honor on page 31 of the
version you're looking at in the last
sentence of C, before the insert Mr.
Butler read, there's language there
preserving the rights of parties in
interest providing the characterization
point -- for the recharacterization
point.

THE COURT: Right, Okay. All
right. The last part on, I think, this
basket of issues, is again on the
debtors' reservation of Roy Iksind,
paragraph 16. If I read the pleading's

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writing, if I heard the version right today, the debtors are reserving, on the interest that we talked about. You need to object different if it's claimed outside of the lenders' scenario. (indiscrible) have a right to object to these and expenses asserted by someone other than the agent.

MR. ZIMEN: Yes, Your Honor.

THE COURT: And I think it's only at this -- this discovered interest.

MR. ZIMEN: I thought Ray Uppet dealt with what allowed this. Certainly, Your Honor, that is correct.

THE COURT: You should take a look at that because I think, both on page 38 and 39, at least, it seems to just cover the interest rate.

MR. ZIMEN: We'll revise that, your Honor.

THE COURT: Okay.

MR. BUTLER: Your Honor, then with those statements, I'd like Mr.

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2 Rosenberg to confirm that we have
3 satisfied the requirements of the
4 creditors' committee with respect to
5 this motion.

6 MR. ROSENBERG: Your Honor, I'm
7 pleased to report that we have. Our own
8 objections have been satisfied with a
9 reasonable compromise here. And, given
10 where we came out including such issues,
11 in particular, as the preservation of
12 the right to seek recharacterization
13 which had not been in the earlier
14 documents, the agreement with the pre-
15 petition lenders, Mr. Brilliant's
16 clients, makes a lot of sense. So, we
17 are generally happy and pleased with the
18 outcome this afternoon.

19 THE COURT: Okay.

20 MR. ZIMEN: Your Honor, Ken
21 Zimen, again, for the record. The
22 agent, too, is supportive of the
23 resolution as described by Mr. Butler
24 with just one clarification, that the
25 time period for the committee to review

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2 the values without prejudice to the
3 agents' rights or the rights to lenders
4 to make a 506(a) motion, if and when
5 they determine that to be appropriate.

6 THE COURT: Right.

7 MR. ZIMEN: And the super duper
8 claim that was described regarding
9 reimbursing essentially the estate for
10 the costs of obtaining avoidance
11 proceeds before they would be available
12 to satisfy indiminution in value claim,
13 that's to the extent not already paid,
14 since it's our property that's going to
15 pay a lot of the expenses to the estate
16 already. It's not a double dip, it's
17 the same concept.

18 THE COURT: Okay. Very well.
19 I agree that it's a reasonable
20 compromise and resolution on this basket
21 of issues and so I would approve it
22 subject to the whole order, of course.

23 MR. BUTLER: Your Honor, moving
24 along, I think the next person who wants
25 to be heard is Mr. Bienenstock about

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2 General Motors.

3 THE COURT: I'm sorry, there
4 was one small thing. 'Cause I looked at
5 this a little differently, in one
6 respect, and Mr. Zimen's comment about
7 double dipping made me remember. Right
8 now, on page 41, a committee is limited
9 to \$250,000 to perform the
10 investigations commenced by its charge
11 to look at the banks' liens and claims.
12 And that seemed reasonable to me for
13 avoidance actions and other causes of
14 action, but more and more investment
15 bankers charge. I would assume that the
16 work of the committee's financial
17 advisor and attorney left a value of
18 what the debtor is and hence what the
19 collateral is. Probably wouldn't be
20 covered in that \$250,000, would it,
21 anyway? Investment bankers eat that up
22 in about a month a half.

23 MR. ZIMEN: Acknowledging that
24 we all may be in the wrong line of work,
25 Your Honor, I guess we should delete

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2 that. I don't think we ever found it,
3 we going to commence litigation, clearly
4 they need to be able to respond. And to
5 do financial investigation, I think this
6 is -- I'm sorry --

7 THE COURT: Okay.

8 MR. ZIMEN: You know, from our
9 perspective, I think the debtors have a
10 vested interest in this as well because
11 this is a case where their real hope is
12 substantial unencumbered value.

13 THE COURT: This is covering
14 all academic --

15 MR. ZIMEN: Put out.

16 THE COURT: Just looking ahead
17 to hope's possibility.

18 MR. ZIMEN: Hope so, Judge.
19 So, I think I agree with Your Honor that
20 to the extent that the committee is put
21 to the test a bit, either determine
22 value for their own benefit to be able
23 to waive on this or being put to the
24 test because we filed 506(a) motion. I
25 don't believe the 250 has part in that.

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2 THE COURT: Okay. Sorry to
3 interrupt you, Mr. Butler.

4 MR. BUTLER: Your Honor, I
5 believe the next person who wants to
6 talk.-- I believe Mr. Bienenstock was
7 rising to indicate that his objection
8 was also resolved in General Motors
9 Corporation.

10 MR. BIENENSTOCK: Good
11 afternoon, Martin Bienenstock, with
12 Weil, Gotshal & Manges for General
13 Motors Corporation. Your Honor, coming
14 into this hearing, General Motors
15 Corporation had agreed on a proposed
16 order with the debtor in its capacity as
17 customer, and we were hoping that that
18 would be proved as it is. Of course,
19 there were subsequent arrangements that
20 Mr. Butler has described to the Court
21 which are going to require some
22 additional language. There's one
23 particular comment about conforming
24 language on adequately protected
25 interest and collateral which we felt,

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if made, might, in certain sections of the order and not in others, might have a negative implication. So, after discussing it with the debtor, we determined the best thing is simply to clarify this on the record. It arises under Paragraph 18 of the proposed order, which is applicable to all customers. In general, Your Honor, what paragraph 18 does, is it provides customers first a replacement lien for their allowable setoffs on their first petition payables, because they'll be paying their pre-petition payable into the estate. But the post-petition lien may or may not have any value because it's second next to the DIP lenders' first lien. So, if it is insufficient to fully protect the customer's allowable setoff claims, Paragraph 18 provides for the customers to have other liens, some are third liens, on property of the estate behind the pre-petition lenders. Some are second equal liens

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with the pre-petition lenders on property that had not previously been part of a collateral package. There's a provision in paragraph 18 that provides for what I just described and 507(b) claims in a certain priority to back up the liens. The clarification I wanted to make and, I think, General Motors would want and I suspect all of the customers would want the debtors or any party of interest to speak up if they don't think the meaning of the order is this. If, hypothetically, a customer has an allowable setoff claim above a million dollars as of the petition date and it turns out that the replacement liens are worth \$800,000. The other liens, the second and third liens and the 507(b) are supposed to protect the \$200,000 diminution. That's the diminution of the allowable setoff claim as per the beginning. We think it's plain, that's what we intended. We think that's what the debtor intended

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2 and the pre-petition banks understood
3 and the committee understood. But, lest
4 there be any confusion on that, we
5 thought it's important to put it on the
6 record.

7 THE COURT: Okay. Well, I
8 certainly would. All of the grants a
9 letter of protection here, not just for
10 setoff claims but for the other secured
11 creditors to cover diminution only.

12 MR. BIENENSTOCK: Our point is
13 it's diminution from the value of our
14 allowable setoff claim.

15 THE COURT: The original setoff
16 claim?

17 MR. BIENENSTOCK: That's right,
18 yes.

19 THE COURT: Okay.

20 MR. BIENENSTOCK: Thank you.

21 THE COURT: In any event, just
22 -- I'd make sure I understand this as a
23 play, this sort of DIP provides the
24 mechanism for -- I got to turn ordinary
25 core of setoffs and without lifting the

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2 very next day to let that happen, right?

3 MR. BIENENSTOCK: Yes. So that
4 will, in effect, reduce at least some
5 customers' allowable setoff claims that
6 would need protection.

7 THE COURT: So, it's important,
8 obviously, to keep a record of what
9 their claims were at each point so this
10 can be tracked.

11 MR. BIENENSTOCK: Well, at
12 least for General Motors, we will do it
13 and I'm quite sure Delphi will have a
14 counter record.

15 THE COURT: Okay.

16 MR. BIENENSTOCK: Which
17 hopefully will match up.

18 THE COURT: Okay.

19 MR. BIENENSTOCK: Thank you,
20 Your Honor.

21 MR. BUTLER: I'm not sure I
22 follow exactly how Mr. Bienenstock got
23 to the conclusion, I will confirm to the
24 Court on the record that the conclusion
25 he reached is one that the debtors

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2 concur with.

3 THE COURT: Okay.

4 MR. BUTLER: And, as the Court
5 also stated, Your Honor, moving now to
6 some other issues, if we may. I think
7 we have resolved, I don't know. Is Mr.
8 Somerstein still in the courtroom? I
9 believe he now resolved any issues that
10 the DIP lenders have, the pre-petition
11 agent has, the Goodwin Proctor Group has
12 as part of the pre-petition bank group
13 has, the creditors' committee has and
14 General Motors has, as to the order that
15 was filed as the Debtors' 4, with the
16 changes that we have thus far placed on
17 the record. That leaves us with a --
18 turn to Debtors' 28 and 29 in terms of
19 the objections that are locked. That
20 leaves us with objections from debtors'
21 setoff and lien claimants, the vast
22 majority of which had been resolved,
23 based on the treatment that we proposed
24 here, and others who still want to
25 address the Court. I'm going to ask us

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to get to those in a few moments, but I want to address any other objections first. And I think the only other objection that has not been fully resolved, other than to be getting off into the setoff bucket, if you will, or basket, is that of Bank of America as it relates to their interest as an aircraft lessor. And in that respect, they had filed an objection that wanted to make it clear that the interest that were being given here today did not negatively implicate the aircraft leases and certain permissuity and other matters relating that. And, in fact, there is language in paragraph 25 of the order, page 54 of Debtors' 4 that is quite explicit in that regard, and I think, frankly, stated with what Your Honor stated at the first day hearing in terms of Your Honor's expectation with aircraft leases and property that wasn't necessarily property of the estate, but even beyond that, is now explicit as to

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personal property that some of the
aircraft leases and so forth. I believe
that that language as it stands is
acceptable to Bank of America but I
believe Mr. Mares is on the phone and
there are other things that they wanted
the debtors to do beyond this language
that I believe Mr. Mares still wanted to
address the Court; we simply couldn't
accommodate the needs.

THE COURT: Okay.

MR. MARES: Your Honor, thank
you very much, Ted Mares. We had had
long conversations with debtors' counsel
and we've nearly narrowed down the
issues to three. Number 1, there is
some ancillary property that includes
cash collateral generated by the
aircraft that we are asking that it not
be subject to a lien and I think that's
the understanding, we had asked --

THE COURT: How does the
aircraft generate cash collaterals it
moves down?

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2 MR. MARES: There are charter
3 agreements.

4 THE COURT: Okay.

5 MR. MARES: And there are
6 revenues payable under the charter
7 agreements. They're potentially our sub
8 leases, although I'm not sure that there
9 are any in businesses right now, but the
10 charter agreement does let show the
11 revenues that are involved.

12 THE COURT: Okay.

13 MR. MARES: So, what we've
14 asked, and we understand that the
15 debtors are using whatever cash
16 collateral that generated by the charter
17 agreement, we just want to make clear
18 that in that with the insertion of a
19 phrase in paragraph 25, just to make
20 sure that the liens do not cover
21 property that is subject to the lease
22 agreements or at the security for. I
23 haven't heard that from them on that,
24 but I think what Mr. Butler said I
25 contest that he wanted to do that. The

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2 second item is, we are objecting to the
3 subordination of our 365(d) 1020.

4 THE COURT: Let's take them one
5 at a time, Mr. Mares.

6 MR. BUTLER: I think the issue,
7 and counsel for the DIP lenders has
8 reasoned as well, the issue the debtors
9 have, is, we believe it's always cut off
10 by the order is that as it relates to
11 this particular issue, and I think I
12 have it right, that if in fact there's a
13 valid lien in that particular property
14 then it is not negatively impacted by
15 this order.

16 THE COURT: No. That's covered
17 by the general language granting the DIP
18 lender a lien.

19 MR. BUTLER: And therefore, we
20 thought nothing else was needed --

21 THE COURT: The preexisting
22 liens are not prominent as laid out in
23 McGraff; I forget what it is.

24 MR. BUTLER: There about 17 I
25 believe, Your Honor. 7(c), like 7

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2 Charley.

3 MR. MARES: Your Honor, if it's
4 necessary to file a motion for adequate
5 protection we will, but we will just ask
6 the continuing liens be granted and put
7 out the ancillary --

8 THE COURT: No. The debtors
9 can't use cash collateral without your
10 consent, or I'm showing adequate
11 protections so you're stating to them
12 now you don't consent.

13 MR. MARES: I'm sorry.

14 THE COURT: So the balls are in
15 their court at this point.

16 MR. MARES: Okay. Your Honor,
17 thank you.

18 THE COURT: Okay.

19 MR. MARES: And the only other
20 point is that we are objecting to the
21 subordination of our 365(d)(10) claims
22 and any other claims that are granted
23 pursuant to this order. The debtor is
24 getting use of the claim during the
25 Chapter 11 case; there is an LB status,

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2 you know 365(d), and claims and we
3 should just add that --

4 THE COURT: As these were
5 secured or misreleases.

6 MR. MARES: These are two
7 leases but that security for the lease
8 application there's a small part in what
9 I call collateral charter agreement,
10 managing agreement sub leases that are
11 separately pledged here to be leased a
12 two lease obligation.

13 MR. BUTLER: Your Honor, the
14 debtors' problem with the language Mr.
15 Mares's clients wanted him to pursue
16 here is that it really attempted to have
17 the debtors agree with lots of things.
18 That these were two leases this part
19 secured, and the relationships between
20 them. And we are prepared simply to do
21 that. We understand Your Honor's
22 admission about cash collateral, but I
23 don't believe that this order is drafted
24 if Mr. Mares's client has that which he
25 claims that they have, that they are

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2 negatively impacted.

3 MR. MARES: Just to respond
4 Your Honor, I'm not asking for -- I
5 understand Mr. Butler's point. I guess
6 all I'm asking is to the extent that we
7 do have two 365(d) cash claims, then
8 those not be subordinated with other
9 claims that would arise from this order.

10 MR. BUTLER: Mr. Mares, was
11 that a part of your objection?

12 THE COURT: I have to confess,
13 I have to give orders 'cause I didn't
14 look at this issue until about 10
15 seconds ago.

16 MR. BUTLER: I never heard that
17 raised by Mr. Mares in your objection,
18 was it raised?

19 MR. MARES: I think it was
20 raised in discussion, it's not on the
21 objection certainly as discussions with
22 Mr. Cantor and others.

23 MR. BUTLER: Well, I think what
24 you're asking for is not acceptable
25 probably to anybody in the courtroom in

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2 terms of the lenders or anybody else.

3 And, Your Honor, he didn't raise it in
4 any objection I heard.

5 THE COURT: I certainly want to
6 understand the objection, this isn't as
7 to the specific assignment that you've
8 been given of a lease because that would
9 be the debtors -- that wouldn't be
10 covered by 365 -- we're talking about
11 either that the leases are --

12 MR. MARES: Your Honor, we
13 believe these are true leases. And the
14 lease obligations are monthly lease
15 statements that are due Bank of America
16 by the debtor. And under 365(d)(10) the
17 performance of these obligations, for at
18 least after the 60-day grace period,
19 arguments such as priority. The DIP
20 order does provide for subordination of
21 administrative receptance. We are
22 asking that our 36 id 10 and to be
23 (indiscernible) those names doesn't
24 become true lease, that would be
25 subordinate.

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2 MR. BUTLER: Your Honor, this
3 is subordination -- Mr. Mares is saying
4 is that we're giving a super-party claim
5 of the DIP line, there the answer is,
6 you bet. And it is a super-priority's
7 intended to be. They're not going to
8 give it up for this or any kind of
9 administrative claim outside of what's
10 said in the order. This, you know,
11 objection is untimely, among other
12 things, Your Honor.

13 THE COURT: I'm going to deny
14 this objection for that reason. Unless
15 you're prepared to have our own trial
16 today on 364(c) which I think highlights
17 the untimeliness of the objection, it's
18 just not an issue of adequate
19 protection; this is just whether the
20 debtors could get financing on a simple
21 non-priming, non super-priority basis.

22 MR. MARES: Other than that,
23 all of our other objections are gone.

24 THE COURT: Okay. All right.

25 MR. BUTLER: Your Honor, I

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2 think, and this is so I ask him to quote
3 him on the phone to see if I had missed
4 anyone. Other than setoff claimants, is
5 there any other party who has an
6 objection to this matter?

7 THE COURT: I'm going to say
8 this once more, please turn off your
9 Blackberries it affects the transcript.
10 This is on a digital recording system,
11 everything else about this system is
12 superior to the prior system, so -- but,
13 if you have your Blackberry on and get
14 an e-mail, there's static on the CD and
15 therefore the people who transcribe it
16 won't be able to hear it. So please
17 turn off your Blackberries.

18 MR. ROSENBERG: Your Honor, I
19 wonder if it's somebody on the
20 telephone, because it also affects it on
21 that end, you might --

22 THE COURT: I guess it does,
23 and maybe that is the case. If you're
24 on the telephone you must turn it off
25 too.

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2 MR. BUTLER: One other party
3 wants to be heard before we get to
4 setoff.

5 MR. NEWMAN: Your Honor, very,
6 very briefly, Max Newman of Schaffer and
7 Weiner on behalf of nine parties. We
8 filed a joint objection relating, in
9 part, to tooling liens and we had a
10 discussion during the break with respect
11 to resolving that with some additional
12 language in paragraph 6 of the financing
13 order relating to the administrative
14 expense claim of the DIP lenders. They
15 had put a carve-out in section 7(d) of
16 the order, with respect to liens of the
17 type that's on the top of page 22 of the
18 red-line.

19 THE COURT: All right.

20 MR. NEWMAN: And that carve-out
21 was not in place also with respect to
22 the super-priority administrative claim.
23 And it was my understanding that there
24 was an agreement to import that same
25 carve-out, that same exception into the

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2 super-priority lien status.

3 THE COURT: What, I'm sorry.

4 Super-priority lien or super-priority
5 claim?

6 MR. NEWMAN: Super-priority
7 claim. I'm sorry, Your Honor.

8 THE COURT: All right. Is
9 there such an agreement?

10 MR. NEWMAN: Your Honor, there
11 is.

12 THE COURT: Okay.

13 MR. NEWMAN: In that there's
14 language that's going to go into 6(a),
15 paragraph 6(a) that is going to make
16 sure it excludes the issue that is
17 raised here. The language and the DIP
18 lenders agreed to this, I'm told. The
19 language that appears on page 22, at the
20 top of page 22 in Roman IV, involving
21 statutory liens or securities just
22 arising after the petition date and
23 permitted under the DIP credit agreement
24 that by operation of law would have
25 priority over pre (indiscernible)

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2 security interest. That language is
3 going to also appear in paragraph 6(a)
4 in the fifth line.

5 THE COURT: Okay.

6 MR. NEWMAN: Thank you, Your
7 Honor, and I wish to have my clients so
8 support the entry of the order as
9 drafted.

10 THE COURT: Okay.

11 MR. BUTLER: Now I'm asking
12 anyone other than setoff claimants, is
13 there any other objector on the phone or
14 in the courtroom who has an issue with
15 the order? Your Honor, I think with the
16 Court's permission, that item in turn
17 setoff, the last remaining bucket which
18 is the setoff claimants. Your Honor,
19 there are a series of matters I want to
20 read into the record much like Mr.
21 Bienenstock's clarification. I would
22 point out, Your Honor, that we're now
23 focused primarily on paragraph 18 of the
24 order, which I concede, Your Honor, is
25 the longest paragraph I have ever seen

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in a financing order. But it is the product of extraordinary lengthy negotiations between all the major stakeholders in this case, I think, that had a direct interest in this. Other than -- I should be candid about this, other than the creditors' committee which did not participate directly in the immediate negotiations relating to this, but now support entry of the order. And, with respect to that language and I don't think we proposed to make any changes to that language because it is so delicately negotiated. But if you want to read some clarifications which I understand is all the objections of maybe 20 or 25 of the parties on board, the first, Your Honor, is just a statement that, notwithstanding the fact that there is a series of alternative dispute approaches in this order, this is a first. Go work out your setoffs with the company and the committee. Second, go to mediation. Third, go to

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2 arbitration or you can also come to
3 court. It's not intended, and we'll
4 certainly clarify if there is any
5 language clarification we need to, but
6 I'll say on this record, it's not
7 intended to prevent anyone from coming
8 to court at any time. Now, it also
9 means that there may be, some of us will
10 come before Your Honor and say, Your
11 Honor ought not grant the relief they're
12 seeking without having gone through all
13 that. So, we reserve all of our
14 rights; the committee uses its rights,
15 and other parties do. But the fact is,
16 if an individual -- you know, setoff
17 claimant, wants to come to court, then
18 they could come to court.

19 THE COURT: Subject to the
20 other parties want to argue that they
21 should go through these other alternate
22 dispute.

23 MR. BUTLER: But the order
24 doesn't require them to do it, Your
25 Honor.

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2 THE COURT: Okay.

3 Mr. BUTLER: And, I want to
4 make that clear.

5 THE COURT: I'd like the
6 parties to (indiscernible due to static
7 on digital recording), because I've got
8 (indiscernible due to static on digital
9 recording) If that's the deal I think
10 it'll give you the fact that could none
11 of the setoff claimants are here, just
12 the objectants are here; you're not
13 making clear to them they have a right
14 to come to court. Now, pertaining to
15 the other procedures that are being able
16 to request that ultimately the dispute
17 was an issue in procedures be followed
18 first.

19 MR. APPLEBAUM: (indiscernible
20 due to static on digital recording)

21 THE COURT: What I'm saying,
22 and I'm not sure I understand you, what
23 I'm saying is just repeating what Mr.
24 Butler is saying, which is that by way
25 of these punitive dispute resolution

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2 mechanisms in the agreement --

3 (indiscernible due to static on digital
4 recording)

5 MR. BUTLER: And, Your Honor, I
6 should point out that paragraph 18(a) on
7 page 40 of Debtor's 4, does have
8 language in it to that effect.

9 THE COURT: That's fine.

10 MR. BUTLER: And, we put it in,
11 but we'll make sure it's very clear, but
12 I want it stated on the record.

13 THE COURT: It is clear.

14 MR. BUTLER: Your Honor, the
15 next item, and this again we're in
16 paragraph 18 in all of these. With
17 respect to paragraph 18(a)(4), we want
18 to clarify that nothing in the order
19 affects the right of any party to
20 exercise post-petition setoffs or
21 recoupment rights out of respect to
22 these post-petition matters. Second,
23 respect to Section 8, paragraph
24 18(a)(1), to the extent that any party
25 has a valid pre-petition setoff right,

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nothing in the order affects such party's rights. However, with respect to valid pre-petition recoupment, nothing in the order diminishes such recoupment right, but channel such rights into the program to find in paragraph 18. Third, this is in respect to paragraph 18(a)(3), there is no cap in the ordinary course setoff or recoupment rights of any party other than General Motors Corporation, which is as defined in the order. Fourth, with respect to paragraph 18(a)(1), similar to the point when the order printing is made, the pre-petition setoff or recoupment rights of any party, which is a valid setoff or recoupment right, will be permitted under paragraph 18, irrespective of the financial condition of the debtors. And finally, with respect to paragraph 7(c), the pre-petition and post-petition setoff and recoupment rights of any party are senior to the rights of the

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2 DIP lenders.

3 THE COURT: Oh, okay. And a
4 DIP lender isn't a regular debt, no
5 standard?

6 MR. BUTLER: Can I have a
7 moment, Your Honor, please?

8 THE COURT: Yes.

9 MR. BUTLER: Your Honor, I used
10 the word negative earlier when I
11 shouldn't have. I used a couple extra
12 words I shouldn't have, I'm told. And
13 the Paragraph 7(c), and I'll read it
14 again, the words again, the pre-petition
15 setoff and recoupment rights of any
16 party are senior to the rights of the
17 DIP lenders. Let's see what paragraph
18 7(c) says, and a DIP agent agrees with
19 that statement.

20 MS. O'DELL: I'm sorry, Your
21 Honor, Maureen O'Dell again. We talked
22 with this agent. We'd like to consult
23 with this, we're just not sure we really
24 understand it.

25 THE COURT: You're talking

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2 about pre-petition loans, right?

3 MR. BUTLER: Yes, Your Honor.

4 THE COURT: Okay.

5 (indiscernible due to static on digital
6 recording). Let's just say it's that
7 there not getting primed about the
8 dipping.

9 MR. BUTLER: Correct.

10 THE COURT: All right. I think
11 all of those statements it includes it
12 in the order here in what I read. So,
13 to the extent that they help clarify the
14 order, hearing that kind, we'll talk
15 then.

16 MR. BUTLER: Your Honor, I
17 believe there are some parties, some
18 setoff claimants or alleged claimants
19 that still want to address the Court.

20 THE COURT: Okay.

21 MR. BUTLER: Your Honor, it
22 would be helpful if they do so, if
23 people would identify what their
24 objection is so we can track to it.

25 MR. MCDOWAL: (indiscernible

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2 due to static on digital recording)

3 THE COURT: You'll have to

4 speak up a little louder, sir.

5 MR. MCDOWAL: That's okay. The
6 lenders for the first (indiscernible due
7 to static on digital recording)

8 THE COURT: To the extent that
9 ultimately you still have to prove your
10 claim under the Bankruptcy Code and
11 you'll to set up on under the Bankruptcy
12 Code.

13 MR. MCDOWAL: Understood
14 (indiscernible due to static on digital
15 recording)

16 MR. PLANTES: Your Honor, Neil
17 Plantes. I mean, paragraph 18 which has
18 been so carefully negotiated says what
19 it says and I don't want to sort of have
20 these blatant -- I understand what the
21 Court said and I understand what those -
22 - I believe that to be the case that
23 they have to prove up their matters, and
24 there's a process here on how they can
25 deal with these matters under the DIP

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2 financing order.

3 MR. MCDOWELL: Well Your Honor,
4 paragraph 18 says what it says and the
5 language that third provision on this
6 could be argued that you altered it
7 (indiscernible due to static on digital
8 recording)

9 THE COURT: Well the reason I
10 think people are having problems with
11 your statement is that, for example,
12 page 62, offers, you know, subsequent
13 procontractual rights. So if you're
14 accepting the existence of a Bankruptcy
15 Code, then I agree with you.

16 MR. MCDOWEL: So the exception
17 of 362(a) --

18 THE COURT: The Bankruptcy Code
19 generally, I mean, because of 62 -- 362.
20 Okay. All right.

21 MR. MCDOWAL: Thank you.

22 THE COURT: Sure.

23 MR. PASCOE: Your Honor, this
24 is Timothy Pascoe, on behalf of Ford
25 Motor Company.

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2 THE COURT: Yes.

3 MR. PASCOE: Your Honor, our
4 issue is with the inclusion of
5 recoupment and the definition of a
6 setoff. We have no problem with recoup
7 setoffs, obviously the exercise of
8 setoffs are March 8. The 362,
9 recoupment right, they're not,
10 especially ordinary corp recoupment,
11 because there's nothing but a true up
12 between the customer and the supplier,
13 are not affected by the automatic stay
14 and it is proper in an order like this
15 to restrict our recoupment right even in
16 the context of the DIP financing. We
17 object to going through all of the
18 procedures that are set forth in here to
19 exercise this right. It is simply not
20 affected by the automatic stay and is
21 against all ordinary business practice.
22 We're talking about the way we do
23 business and we make it absolutely
24 imperative that we at least be allowed
25 to continue our recoupment as opposed to

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2 our setoff right.

3 THE COURT: Well, I guess I
4 have two things to say in respect of
5 that. First, as I read this, and as
6 clarified further by Mr. Butler, all
7 that means is that paragraph 18 is
8 intended to change the substantive
9 rights that is doing business as Delphi
10 have in respect of true recoupment
11 claims, recoupment rights. That being
12 said, there also -- or recognition or
13 recoupment rights, but also it's the
14 setoff rights that ordinary course, by
15 nature, will not be because of the
16 automatic stay. But, they are subject
17 to the procedure which seems reasonable
18 to me. Particularly, the rideout of any
19 such party to try to expedite that
20 procedure by coming back to court, to
21 determine a regular refrain act. But
22 some of the claims is a recoupment claim
23 or a setoff claim, is in fact a
24 recoupment lawyers that set out claim
25 and the cases are unfortunately pretty

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ninny and they don't (indiscernible) as
to what a recoupment claim is, what a
recoupment right is, and frequently what
part of recoupment right a court finds
is not. And, of course, any bankruptcy
lawyer, working for herself will tell
the client if there's any doubt what's
not exercised sub (indiscernible due to
static on digital recording). So I view
this procedure as one that is beneficial
to both sides in this transaction in
that inlay is out of an action for the
debtors with input from the creditors'
committee to make those decision in the
first instance and it's really clear
very quickly and something that's not
very clear (indiscernible due to static
on digital recording) to do it in an
organized way. It tends to happen that
the objection could go around and
debtors could have a chance to come to
me and that would stop. But I believe
that sooner is somehow taking away
peoples rights to become what, of

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2 course, there's to recoup makes the
3 question some of them do have the right.

4 MR. PASCOE: All right. Thank
5 you.

6 THE COURT: Okay.

7 MR. REISMAN: Your Honor Steven
8 Reisman with the firm of Curtis Mallet-
9 Prevost on behalf of Flextronics which
10 is the largest trade creditor in this
11 case. I really have three points to
12 make, really four points to make. One,
13 I compliment that debtor on their
14 efforts with respect to the setoff
15 provisions and the mediation arbitration
16 protocol that they're trying to put in
17 place. The first point I'd like to
18 make, Your Honor, is with respect -- it
19 is a substantive point with respect to
20 18(a)(2), the last sentence. It's a
21 little unclear to me and I'm looking
22 from a black-line, Your Honor, so I
23 apologize. But 18(a)(2) sentence, page
24 45 of the black-line. It says,
25 notwithstanding any award in any such

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arbitration in no event shall the setoff
claimant be permitted to exercise its
setoff right against any payables other
than pre-petition payable except as
hereinafter set forth. I just asked for
a modification of that to say except
there set forth in this paragraph 18
because it talks about the full event
and after that sentence about the
ability to set off against post-petition
payables as well.

THE COURT: Okay. This sounds
-- if it makes sense to me.

MR. REISMAN: What we're trying
to avoid with all these parties is --
there are literally 50 people who want
to wordsmith that site. It is --
paragraph 18 deals with setoff --

THE COURT: If there's any
remedy as to post-petition payables that
actually precede this paragraph then I
think Mr. Reisman is right. So maybe
you should -- just check to see whether
they are, I'm sure if they are then let

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2 the kids fix this one.

3 MR. REISMAN: Your Honor, the
4 second point I have to make, and it's
5 really the second and third, I think
6 it's appropriate for the debtor to put
7 in place some type of protocol on this
8 mediation setoff. For example, they say
9 that notice is to be given to the
10 committee, the debtor, the agent, but no
11 one really knows who to send the notice
12 to and we don't want to -- we want to
13 get the right people to try and go
14 through the issues. As a first line,
15 we'll work through the business people
16 in trying to work through this. But if
17 we can't, I think people should have the
18 right to know, you know, who gets that
19 notice. And it should also set forth,
20 with respect to the mediation and the
21 arbitration, who's going to bear the
22 cost and the process for dealing with
23 that. And I leave it to the debtors to
24 propose something in that regard for the
25 various parties that have the setoff

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2 rights.

3 THE COURT: All right. At
4 least it's their first point; I'm sure
5 the debtors will work out problems with
6 correcting on a process that they
7 accomplish this. And it's probably
8 going to be, you know, at a couple of
9 different levels. But the easy ones are
10 probably dealt with one level in the
11 heart of ones, go to a different level,
12 then you get into actually contesting
13 these things. But I would like to -- I
14 may be pretty busy. So that's the next
15 time to turn to.

16 MR. REISMAN: Thank you.

17 MR. TOERING: Gordon Toering,
18 Your Honor, on behalf of Robert Bosch
19 Corporation. I just want to confirm.
20 There has been a lot of discussion about
21 the particular paragraph 18. I just
22 want to make sure that all of us are
23 clear. And I understood what the Court
24 said and just wanted to verify that I
25 understood correctly. My understanding

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2 of this is that this procedure in
3 paragraph 18 -- it is a procedure. And
4 that a de-plaint setoff claimant could
5 come in to this Court, file a motion for
6 relief from stay and at that point the
7 debtor and any other party of interest
8 could say, not that your order does with
9 this order, to go through this
10 arbitration and mediation procedure.
11 But rather that the bed would be
12 expedient that the Court should abstain
13 on the basis of any number of factors,
14 is that correct, Your Honor?

15 THE COURT: Yes. Obviously I'm
16 giving people warning, if you get into a
17 procedure and you're coming to me
18 because you don't like how it's going,
19 you're going to know very quickly that
20 I'm going to send you back to the
21 procedure. So, I'm not giving people an
22 option to pursue mediation arbitration
23 and change their mind in the middle of
24 it. I guess you can do it, but it will
25 not be very pleasant hitter.

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2 MR. TOERING: That wouldn't be
3 our intent, Your Honor.

4 THE COURT: I'm sure it
5 wouldn't.

6 MR. TOERING: Your report is
7 just to verify having the post-petition,
8 my understanding is that post-petition
9 setoff it does affect going forward
10 shipments because Bosch is both a
11 supplier and a customer of Delphi.

12 THE COURT: Right.

13 MR. TOERING: My understanding
14 is that as to post-petition setoff
15 rights, that those would prime the DIP
16 lenders and anybody else and that was, I
17 thought, an understanding that had been
18 reached. Because that does affect
19 whether or not we're willing to extend
20 the credit to the debtor, and so forth,
21 so I'd like some clarification on that.

22 MR. BUTLER: I don't want to
23 give you the answer what's prime or
24 what's not prime. Their permitted to
25 post-petition setoff rights can be

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2 exercised. I'll leave it at that.

3 MR. TOERING: Well, Your Honor,
4 just to follow that up, I guess that
5 leaves it somewhat open. I just don't
6 want a situation where a lender is
7 coming in and saying if worst case
8 scenario, the case starts crumbling and
9 then lender comes in and says your
10 setoff rights are subservient to our
11 rights. And that's what I'm trying to
12 give it at this point. And, we could
13 work this out; I guess this is something
14 we can manage in terms of the credit
15 issue, but it is something that if we
16 can clarify today, I think it would be
17 helpful.

18 MR. BUTLER: I think it's
19 clarified on page 43 of the order which
20 says that nothing contained here shall
21 limit the discretion of the debtors to
22 pay warranty or private call claims in
23 accordance to those of that court, limit
24 the right of any party in interest to
25 exercise their post-petition setoff or

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2 recoupment against a post-petition
3 payable and the write goes on to the
4 names, I mean I think it's described
5 right in the order. Post against post.

6 MR. TOERING: Describe it as a
7 top priority. That's my point, Your
8 Honor.

9 THE COURT: Or everything is
10 what it is. They included line 12 here
11 of the ACC.

12 MR. BUTLER: Is there anyone
13 else who wants Vesey Corporate for the
14 evidentiary record? Your Honor,
15 recognizing that when a debtor asks a
16 bankruptcy court to consider section
17 364(d), the Bankruptcy Code would affirm
18 the obligation to place evidence in the
19 record irrespective of the existence of
20 any objection. I'd like, with the
21 Court's permission, to first move the
22 admission of Debtors' Exhibits 1-29.

23 THE COURT: All right, that's
24 from that binder you gave me in which 1-
25 5 are the final financing documents, 6-

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2 12 are alternative financing proposals
3 by other groups to the debtors, and 13-
4 16 are evaluation materials; 17-22 are
5 the pre-petition financing documents,
6 22-27 are various Security and Exchange
7 Commission filings and the last two are
8 already in the record. Those were
9 attached, as they were summaries of the
10 objections.

11 MR. BUTLER: Yes, Your Honor.

12 THE COURT: Does anyone have
13 any objections to those being admitted?
14 All right. They're admitted.

15 MR. BUTLER: Your Honor
16 indicated that it'd be acceptable for
17 the debtors to present pre-proffers.

18 THE COURT: Yes. These people
19 are here.

20 MR. BUTLER: Your Honor,
21 they're all here. I'll ask them to
22 stand when I introduce them. The first
23 witness I would call would be David
24 Resnick. Mr. Resnick's standing in the
25 courtroom and is the debtors' investment

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2 banker. The second witness, Your Honor,
3 we would call is Mr. Scott King, Mr.
4 King, from FTI. And the third is the
5 debtors' chief reconstruction officer,
6 Mr. John Sheehan.

7 THE COURT: Okay.

8 MR. BUTLER: Your Honor, in
9 support of motion with debtors that are
10 off the testimony of David Resnick, he's
11 the managing director of Rothschild Inc.
12 Mr. Resnick is present, called, would
13 testify as follows. First, he would
14 testify as to his background, his
15 familiarity with the debtors'
16 operations. He would testify that the
17 debtors' board of directors authorized
18 Rothschild Inc., its financial advisor,
19 investment banker, to seek post-petition
20 DIP financing from its pre-petition
21 secured lenders and other third-party
22 lending institutions. Mr. Resnick would
23 testify that he and other persons,
24 including the debtors' financial
25 advisors, FTI consulting Inc., determine

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that a DIP credit agreement, general in the terms of that proposed, was critical to the debtors' ability to operate in Chapter 11 and for the debtors' successful reorganization. Mr. Resnick would testify that, in his view, the DIP credit agreement is necessary for the debtors to operate the business. He would testify that he participated in the negotiations of the terms and conditions of the agreement and that they were negotiated at arm's length and in good faith. Mr. Resnick would testify that with the credit provided in the DIP facility, it is the debtors, and his view that the debtors would be able to maintain or should be able to maintain adequate cash balances customary necessary for companies of this size and in this industry to operate its businesses, in order to preserve the ongoing value to businesses for the benefits of all parties and interest. Mr. Resnick would also

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testify that he, in participating with the debtors' management team, ran a process to evaluate potential proposals and met with four major mind-setter institutions, all of whom produced proposals and the finding that would testify that the file proposals and you would identify those proposals as the proposals set forth in Debtors' 1 and the alternative financing proposal is not accepted by the debtors as Debtor's 6-12. Mr. Resnick would testify that when the debtors approached these financial institutions they made presentations to the institutions and asked them to provide both priming facilities and non-priming facilities -- take-out facilities in as significant an amount of money as the institutions could provide or would provide, but in the case of a take-out refinancing not less than 4 billion. He would testify that in evaluating these proposals that the debtors and their financial advisors

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analyzed carefully the structures;
discussed the structures with the
different institutions and ultimately
reached a determination that there were
essentially three gating elements that,
in the view of the debtors and in the
view of Mr. Resnick as a debtors
investment banker, where the tantamount
considerations are in determining what
was an acceptable facility that could,
in fact, meet the requirements of the
debtors' financing needs. And those,
Mr. Resnick would testify that those
three factors included execution risk
issues, issues relating to size and
liquidity of the facility and issues
relating to the economics of the
facility proposed. Mr. Resnick would
testify as to execution risks that in
his view this is, if not the largest,
among largest total packages, financing
packages sought in the history of the
federal system. It's four and a half
billion dollars in total. And the

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debtors recognized that in trying to
take out financing of four billion,
which was the maximum the debtors had
obtained among the proposals, Mr.
Resnick would testify that as to the
four billion dollar facilities that the
debtors took into consideration, the
complexities of actually executing that
take-out facility which would have been
the largest in Mr. Resnick's, at least,
experience ever would be considered in
the federal bankruptcy system. Mr.
Resnick would also testify that he and
others at Rothschild, together with
members of management, consulted with
the senior managers and advisors at the
various -- at both JP Morgan and at
Citibank in particular, and were
advised, at the end of the day, that
those institutions believed that the
execution risk were significantly lower
in the priming facility than it was in
the take-out facility. In addition, and
that's reflected in the rates and in the

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economic terms and in other provisions that are in the record at this point, Mr. Resnick would also testify that in the final structure that was agreed, the priming facility generated an additional half a billion dollars worth of liquidity for the company because the other proposals, the non-prime proposals; the take-out proposals required a pay-down of the pre-petition loans in the amount of approximately 500 million dollars so that the net available would have been, in a take-out would have been four billion. And, in this particular structure where there was a priming of the two and a half billion dollar pre-petition that in fact there would be an additional half a billion or more of additional liquidity available to the company. Mr. Resnick would testify that in terms of economics, that Rothschild benchmarked economics in this facility against those in its data base, that Rothschild is a

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part of, during their course of
business, maintains a data base of
similar DIP financings; that Mr. Resnick
had, on behalf of Rothschild, has
participated in many refinancings and
DIP facilities, and that when they
reviewed the competitive data base that
the economics in this data base were
actually -- were benchmarked extremely
favorably to that which was in the
marketplace and in appropriate prior
DIPs that would be comparative. Your
Honor, Mr. Resnick would also testify
that he has reviewed the terms and
conditions of this DIP and these are the
DIPs -- the terms are fair and
reasonable. And as I indicated, would
testify that his opinion is based in
part on the database of selected
historical DIP facilities that is
maintained by Rothschild. In terms of
the debtors' needs, Mr. Resnick would
also point to the debtors' DIP
facilities of projections which are

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included in the record at Debtors' 13,
and would point to the fact that the
four and half billion dollar facility,
based on the forward projections, would
suggest that at the end of the period
about a half a billion dollars of
liquidity would be available based on
the projections there. Mr. Resnick
would testify that, in his experience, a
company of this size and complexity, one
of the Fortune 50 companies in the
country, would in fact require a very
substantial excess availability in order
to operate its business and maintain the
confidence of its suppliers and
customers. Finally, Mr. Resnick, would
testify about the structure of Delphi,
and the structure of this restructuring
and which involve a bilateral message
where the company's U.S. entities are
involved in this Chapter 11 case, but
its global businesses are operating
outside of Chapter 11, even though many
of the products that it maintains are

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2 operated on a horizontal, as opposed to
3 vertical, sort of structure, globally.
4 And, Mr. Resnick would testify, that in
5 dealing with a customer located outside
6 the United States, dealing with
7 suppliers outside the United States,
8 dealing with suppliers and customers
9 that have potential setoff claims and
10 recoupment claims, and other actions
11 that could be taken in connection with
12 the company, that it was extremely
13 important, in his judgment, to stabilize
14 the business that the company have the
15 DIP facility that is put in place. And
16 that in his professional opinion, there
17 was no other facility made available to
18 the debtors that met the debtors' needs
19 and requirements. Your Honor, that
20 would be sum and substance of Mr.
21 Resnick's testimony.

22 THE COURT: Okay. Does anyone
23 wish to cross-examine Mr. Resnick or his
24 testimony? All right, you can move over
25 to the next witness, then.

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2 MR. BUTLER: Your Honor, the
3 next witness would be Mr. Scott King.
4 Mr. King had called to testify. He
5 would testify that he is employed by FTI
6 Consultant Inc. as a senior managing
7 director, that he needs FTI's method of
8 restructuring practice and that prior to
9 August of 2002, he was a partner for
10 five years at Price Waterhouse Coopers'
11 business recovery practice and held
12 various positions prior to that date.
13 Mr. King would testify that he has spent
14 more than 20 years of experience in
15 developing, implementing improvement
16 strategies for companies experiencing
17 financial distress. And that his role
18 at FTI is, in this assignment, is to
19 provide, among other things, on-site
20 assistance at the company in connection
21 with its Chapter 11 case, and dealing
22 with essential suppliers, and working
23 with the creditors' committee, and
24 working with the company in connection
25 with its relationships with its lenders.

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It's the formulation of its former borrowing projections, the formulation of its business plan and other matters. Mr. King would testify that he prepared the document that has been admitted into evidence as Debtors' 14, that that document was prepared by him, based on his examination of the debtors' books and records, and based on his examination of various reports that were provided to him, including the reports that had been admitted into evidence in the debtors' exhibits relating to various evaluations of the debtors' collateral. Mr. King would testify that in his opinion, based on a build up, on a going concerned basis, that those as much as 9.6 billion dollars worth of collateral available to support the adequate protection packages here, which would consist of a two and half billion dollar pre-petition lender claim, a two billion dollar DIP lender claim, and as much a five billion dollar equity

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cushion that would available based on the book values of PP&E, Property Plant Equipment. Assessing the evaluation of the foreign stock, assessing the evaluation of the inventory, and assessing the evaluation of receivables and cash and the performance of those assets in the debtors' ordinary course of business on an historical basis, Mr. King would also acknowledge that he examined and relied on, in preparing his testimony, relied on the Debtors' 16, which is an appraisal prepared by Hillco Appraisalment Services as with respect to Delphi PP&E which attributed an 850 million dollar allocation value to PP&E as opposed to the 2.9 billion dollar book value that the debtors currently assigned to the PP&E. And if you assigned the liquidation by the PP&E, which Mr. King would suggest, is of all the various collateral items the one that he would acknowledge would have perhaps more speculative amounts in

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terms of whether liquidation or going to
turn out to be involved, that if you
assign liquidation value to that
particular bucket of collateral that the
total value of the collateral would be
somewhere in the 7.6 billion dollar
range, still providing an ample cushion
to the 4.5 billion dollars worth of pre-
petition and post-petition proposed
claims. Your Honor, Mr. King would also
testify, similar to Mr. Resnick's
testimony, with respect to the key items
of execution risk, size of the facility
and economics. How Mr. King qualify his
testimony with a much stronger emphasis
on size of the facility. It's Mr.
King's view, and in fact he would
testify that he was very active during
the consideration of these proposals in
pushing the company to get as large a
facility as the company could procure,
because Mr. King's professional opinion
that the company needed as much excess
liquidity as possible, given the

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uncertainties of the automotive sector,
the transformation challenges of the
company, in terms of the transformation
plan and strategies that it has
announced publicly. And the
contingencies dealing with the sort of
bi-motor arrangement trying to make sure
that all the customers and suppliers
understand the company had all of the
liquidity that it reasonably thought
necessary to address its issues. So,
Mr. King would testify that his
principal focus was how much money could
the company get, and he viewed that as
the most important factor involved here.
He will also testify that he
participated in the examination of all
the proposals and participated, along
with the members of FTI, in aspects of
the negotiations of the transaction.
And would testify that, in his
professional opinion, there was no other
financing available to the company that
would meet the company's needs and

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2 requirements. And that would be the sum
3 and substance, Your Honor, of Mr. King's
4 testimony.

5 THE COURT: Okay. Does anyone
6 want to cross-examine Mr. King or his
7 testimony? All right. You can move on
8 to the last witness.

9 MR. BUTLER: Your Honor, the
10 last witness who would testify would be
11 Mr. John Sheehan. He would testify that
12 he is the vice president and chief
13 restructuring officer at Delphi. And he
14 would testify that from the period of
15 March 4th, 2005 through October 8th, he
16 also acted as the interim chief
17 financial officer, chief accounting
18 officer and comptroller of Delphi
19 Corporation. Having joined Delphi in
20 July of 2002 as chief accounting officer
21 and comptroller, Mr. Sheehan would
22 describe his role at Delphi as being
23 involved and being tasked with the
24 principal responsibility for all aspects
25 of the company's restructuring. And as

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part of those duties, he would say he's responsible for reviewing and analyzing the company's assets and operating financial strategies, as well as the company's business plan and financial projections, and being responsible for the review and analysis and negotiation of proposals to the company in connection with third-party transactions, including proposals for DIP financing. Mr. Sheehan would testify that he is familiar with the company's cash needs and that he developed that understanding during his period of responsibility at the company as chief accounting officer and comptroller and that he is very familiar with requirements of how the company operates globally; its need for financing the operations of the enterprise, the need for dealing with essential suppliers and customers and operating the debtors' business. He would testify that he was involved in

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the process which resulted in the procurement of the DIP financing that's before the Court, as evidenced in Debtors' Exhibits 1-2 and 2(a). He would describe that process began early this year on a contingency basis as the board considered various alternatives involving a consensual structuring of the company's operations in the United States. And, as part of that analysis, the company retained financial advisors to assist it and its board of directors in evaluating its options. Mr. Sheehan would testify that Delphi first retained Rothschild Inc. and Rollerton Associates as the company's financial advisors and investment bankers. And subsequently retained legal counsel and then also retained FTI Consulting. He would testify that Rothschild was engaged, in part, to assist the company in soliciting and evaluating various financing proposals, both originally outside of Chapter 11 and ultimately

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inside of Chapter 11 and that they were
tasked with helping him and others at
the company negotiate the best financing
transaction that would be available to
the company to meet its needs and would
also give the company the maximum amount
of flexibility when considering various
alternatives. Mr. Sheehan would testify
that in August of this year that he,
after consultation with other members of
management and a presentation at the
board of directors of the company,
directed Rothschild to begin to reach
out and begin a process for considering
DIP financing proposals on a contingency
basis. That occurred at approximately
the same time that the debtors issued
public statements about a path A and
path B, sort of a QL approach to
evaluating and dealing with their legacy
liabilities and portfolio restructuring
requirements here in the United States.
Those public announcements were made in
early August, and Mr. Sheehan would

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testify that Rothschild was asked to begin this contingency process shortly thereafter. Mr. Sheehan would testify that Rothschild, at the direction of the company, approached JP Morgan Chase and a number of other global financial institutions, including Citibank, Dorchester Bank, and GE Capital with respect to debtor-in-possession financing. He would testify that process resulted in a competitive process that concluded in the proposals that had been admitted into evidence as Debtors' 1 and Debtors' 6-12. Mr. Sheehan would testify that in negotiating with those lenders, Mr. Sheehan was personally involved in, along with Rothschild, in describing the company's situation and was familiar with the materials that were provided in the proposals that were obtained from each of the lenders and the various structures that were involved. Mr. Sheehan would also testify that he was similarly concerned

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on behalf of the company about the three
sort of principal criteria for
evaluating these proposals. Again,
those criteria being the cost of the
facility, the structure and size of the
facility and its execution risk. Mr.
Sheehan would testify that his weighing
of those issues was, generally, similar
to that of these advisors, but that
initially he spent some time and focus
on the cost of the facility, feeling a
need to ensure that the company was
appropriately committing its financial
resources. And that he was extremely
concerned based on his involvement with
the essential suppliers and customers of
the business on making sure that the
proposal could be executed successfully;
that those were among his principal
focuses. Mr. Sheehan would testify that
he participated in the negotiations as a
principal from time to time throughout
the process; that he ultimately
recommended to the other members of

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management and the board of directors,
the commitment letter that is set forth
at Debtors' 1, that in Mr. Sheehan's
judgment that proposal was the only
financing available to the debtors that
could meet the debtors' requirements
going forward. Mr. Sheehan believes
that that proposal was negotiated in
good faith, in an arm's-length basis
between the company and JP Morgan Chase
and eventually Citibank. Your Honor,
Mr. Sheehan would also testify that he's
familiar with the general terms and
conditions of the financing transaction
and that, in his judgment, those terms
are, and in the business judgment of the
debtors, fair and reasonable and
appropriate under the circumstances.
That in his view, this financing
transaction represents the culmination
of what Mr. Sheehan viewed to be an
exhaustive solicitation process for
financing conducted by the company and
it was designed to meet the company's

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needs in these unusual circumstances.
Mr. Sheehan would also testify that he
has reviewed the DIP projections that
form the basis of the DIP financing case
that was presented to the debtors and
which is represented in part in Debtors'
13. And that he believes the size of
the facility, the 4.5 billion overall,
is required, again, because of the
debtors' contemplated needs as they move
through the process. Your Honor, that
would be the sum and substance of Mr.
Sheehan's testimony.

THE COURT: All right. Does
anyone wish to cross-examine Mr.
Sheehan? All right, here and now, I
will accept his testimony.

MR. BUTLER: Your Honor, that
would represent the evidentiary record
that the debtors have. The testimony of
those three witnesses and the 29
exhibits admitted into evidence and we
would rest on that record.

THE COURT: Okay. I'm assuming

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2 in light of the first part of the
3 hearing that no one else has any
4 evidence they want to submit. Okay,
5 I'll close the evidentiary portion of
6 that hearing then.

7 MR. BUTLER: Your Honor, and
8 given the presentation I made earlier, I
9 think at this point we will simply rest
10 on the papers. There's a proposed order
11 we'd like Your Honor to consider. And
12 we would intend to reflect the changes
13 that we have discussed on the record
14 that were indicated to actually be
15 changes to the order. While we know
16 others will want to look at it, we have
17 committed to the creditors' committee
18 that they and we will take our time this
19 evening to get it right. We have
20 language, much of which was read into
21 the record. There's not much actually
22 left to be done, but we want to make
23 sure that we have a chance to flyspeck
24 the order and we'll get it over to the
25 committee and the debtors will get the

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order over to you in the morning. We would like, Your Honor, if you're inclined to approve the financing, to approve it on the record today so we can be in a position to announce, publicly, it's been approved. And also to make clear that to the extent somehow there is some disagreement in what the form of the order says, all that would be brought back to Your Honor tomorrow is a settlement of the order rather than a revisiting of the merits of this case.

THE COURT: Right. All right.

I do approve the financing and adequate protection provisions set forth in the black-lined order as included on the record at today's hearing. And the record will reflect that the parties are moving forward to complete the order and revise on that. All we're looking for is an order that embodies the agreed order as set forth on the record. It's clear to me that this is, at this point, a consensual DIP financing and adequate

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protection order which, I think, may I
extend praise to all of the
professionals involved in resolving the
issues which were not, in all respects,
easy to resolve. I also applaud the
fact that the various parties of
interest were each prepared to sacrifice
in their positions to get to that point.
Based on the proper testimony, I find
that the DIP agreement that was
negotiated in all its length, I can
permit proper and in good faith and/or
mistreatment under Section 354(e) of the
Bankruptcy Code. In loss of further
find that the debtors have satisfied
their burden under section 364(c) and
364(d) from the priority claims, DIP
priority claims in any and all doubt.
You would hold up in my original
reactions to this version was to
question whether in fact the debtors
needed such a large facility here. I
incorporate that they will not need to
draw down on that significantly, but,

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2 you know, I'm convinced that the
3 facility adequately satisfies the
4 debtors' needs and provides them
5 sufficiently, perhaps even abundantly,
6 availability to conduct their bankruptcy
7 case and legal in podium too. You know,
8 conduct their businesses in due course.
9 So, I look forward to getting your
10 letter and, you know, reviewing in
11 letter of record.

12 MR. BUTLER: Your Honor, thank
13 you very much and thank you to you and
14 everyone in chambers for the assistance
15 over the last few days as we moved
16 forward to this hearing. Your Honor, I
17 would plant that the matter 18 on the
18 agenda which is the cash management
19 matter in light of the disposition of
20 this order and the agreement of the
21 committee, I'd ask Your Honor to approve
22 the cash management order as negotiated
23 with the Pension Benefit Guaranty
24 Corporation on a final basis.

25 THE COURT: And the committee.

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2 MR. BUTLER: In case of
3 submitting its objection as to that
4 matter there's a --

5 MR. ROSENBERG: Well, I think
6 the order has to be rewritten.

7 MR. BUTLER: Well, you know,
8 we'll be happy to submit, and we'll
9 submit the order tomorrow morning.

10 THE COURT: Maybe will reflect
11 the same language with respect to the
12 intercompany loan treatment as to DIP
13 order.

14 MR. BUTLER: Yes, Your Honor.

15 THE COURT: Okay, that's fine.
16 And I will approve that.

17 MR. ROSENBERG: Yes, I'd like
18 to add, Your Honor, the review language
19 --

20 THE COURT: Oh, yes. That goes
21 without saying.

22 MR. PASCOE: This is Timothy
23 Pascoe for Ford Motor Company. What Mr.
24 Butler says submit a copy of the revised
25 order for the objecting party as well.

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2 MR. BUTLER: Out of those 50 or
3 60 objecting parties, I mean -- Your
4 Honor, we want to be able to use the
5 committee to submit this in accordance
6 with the record.

7 THE COURT: I think, again, I
8 don't want this turn into a negotiating
9 section. It really is to reflect what I
10 set forth on the record. But I think --
11 I think you have to e-mail it to the
12 objectants if you have the e-mail
13 address, if you don't I would instruct
14 the objectants to provide -- who should
15 I send the e-mail address to.

16 MR. BUTLER: Why don't we just
17 make it easier now, I'll get it to the
18 right people, send it to
19 jbutler@skadden.com and I'll make sure
20 it gets to where it needs to go.

21 THE COURT: All right. But,
22 again, I intend to review it and write
23 up today's record and I think it's
24 important to get it in there tomorrow --
25 by the end of the day tomorrow. So

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2 rather than negotiate provisions, if
3 there's something that you think the
4 debtors have left out, you can send me a
5 short letter to that effect. But I
6 don't want to get people hung up on
7 negotiating language yet.

8 MR. PASCOE: I understand,
9 thank you.

10 THE COURT: Okay. One brief
11 thing. The way the language, in light
12 of the fact that this debtor is training
13 on, I just urge the agent to somehow
14 keep a record of what language and
15 elections people have made so that's
16 it's dated and sometimes in pieces. We
17 don't have confusion at the end of the
18 case.

19 MR. ROSENBER: We will, Your
20 Honor.

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24 (Continued on next page.)

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MR. BUTLER: Your Honor, thank
you very much; that concludes the agenda
for today.

THE COURT: Thank you.

(Whereupon these proceedings
were concluded.)

(Time noted: 2:27)

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I, Esther Accardi, hereby certify that
the foregoing is a true and correct
transcription, to the best of my ability, of
the sound recorded proceedings submitted for
transcription in the matter of:
DELPHI CORPORATION.

I further certify that I am not employed
by nor related to any party to this action.

In witness whereof, I hereby sign this
date:
February 26, 2006

Esther Accardi

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